Calendar No. 129

99TH CONGRESS
1st Session

SENATE

REPORT
99-53

AUTHORIZATION FOR THE NONPERFORMING ARTS FUNCTIONS OF THE JOHN F. KENNEDY CENTER

MAY 15 (legislative day, APRIL 15), 1985.—Ordered to be printed

Mr. STAFFORD, from the Committee on Environment and Public Works, submitted the following

REPORT

[To accompany S. 710]

The Committee on Environment and Public Works, to which was referred the bill (S. 710) authorizing appropriations to the Secretary of the Interior for services necessary to the nonperforming arts functions of the John F. Kennedy Center for the Performing Arts, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF LEGISLATION AND BACKGROUND

The bill would authorize appropriations of $4,529,000 for fiscal year 1986 to the National Park Service for services necessary to the nonperforming arts functions of the John F. Kennedy Center for the Performing Arts. This authorization level is the same amount contained in the President's 1986 Budget and is also the same amount appropriated for fiscal year 1985.

Section 10 of the Public Buildings Amendments of 1972 directed the Secretary of the Interior, acting through the National Park Service, to provide maintenance, security, information, interpretation, janitorial, and all other services necessary to the nonperforming arts functions of the John F. Kennedy Center. The same provision authorized funds to support such services through June 1973, and the Congress has periodically extended that authorization. Without additional funds the National Park Service cannot provide these nonperforming arts services at the Kennedy Center.

S323-8

HEARINGS

Written testimony was submitted by the National Park Service of the Department of Interior in connection with the Committee's hearings on the 1986 Budget.

ROLLCALL VOTES

Section 7(b) of rule XXVI of the Standing Rules of the Senate and the rules of the Committee on Environment and Public Works require that any rollcall votes taken during consideration of this bill be announced in this report.

There were no rollcall votes taken during consideration of this measure. This bill was approved by voice vote with no dissenting votes.

EVALUATION OF REGULATORY IMPACT

In compliance with the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has evaluated the regulatory impact of the legislation. The bill imposes no new regulatory requirements.

COST OF THE LEGISLATION

Section 403 of the Congressional Budget and Impoundment Control Act requires each report to contain a statement of the cost of the reported bill prepared by the Congressional Budget Office. That statement follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 9, 1985.

Hon. ROBERT T. STAFFORD,
Chairman, Committee on Environment and Public Works,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for S. 710, a bill authorizing appropriations to the Secretary of the Interior for services necessary to the nonperforming arts functions of the John F. Kennedy Center for the Performing Arts.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

JAMES BLUM
(For Rudolph G. Penner, Director).

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 710.
2. Bill title: A bill authorizing appropriations to the Secretary of the Interior for services necessary to the nonperforming arts functions of the John F. Kennedy Center for the Performing Arts.
3. Bill status: As ordered reported by the Senate Committee on Environment and Public Works, May 2, 1985.

4. Bill purpose: S. 710 would authorize fiscal year 1986 appropriations of $4.529 million for the nonperforming arts functions of the John F. Kennedy Center for the Performing Arts. The 1986 authorization is the same as both the 1985 appropriations and the President's 1986 budget request.

5. Estimated cost to the Federal Government:

[By fiscal years, in millions of dollars]

	1986	1987	1988	1989	1990
Estimated authorization level	4.5				
Estimated outlays	3.4	0.5	0.5	0.1	

The costs of this bill fall within budget function 30.

Basis of estimate: For purposes of this estimate, it is assumed that the full amounts will be appropriated prior to the beginning of fiscal year 1986. Outlays are estimated on the basis of historical spending patterns for this program.

6. Estimated cost to State and local governments: None.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Deborah Reis.

10. Estimate approved by: C.G. Nuckols (for James L. Blum, Assistant Director for Budget Analysis).

CHANGES IN EXISTING LAW

In compliance with section 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows: Existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman:

SUBSECTION (e) OF SECTION 6 OF THE JOHN F. KENNEDY CENTER ACT (20 U.S.C. 761)

(e) The Secretary of the Interior, acting through the National Park Service, shall provide maintenance, security information, interpretation, janitorial and all other services necessary to the nonperforming arts functions of the John F. Kennedy Center for the Peforming Arts. There is authorized to be appropriated to carry out this subsection not to exeed $2,800,000 for the fiscal year ending June 30, 1976, $741,000 for the transition period ending September 30, 1976, $3,100,000 for the fiscal year ending September 30, 1977, and $4,000,000 for the fiscal year ending September 30, 1978. There is authorized to be appropriated to carry out this subsection not to exceed $4,200,000 for the fiscal year ending September 30, 1979. There is authorized to appropriated to carry out this subsection not to exceed $4,287,000 for the fiscal year ending September 30, 1980, and not to exceed $4,400,000 for the fiscal year ending September 30, 1981, and not to exceed $4,544,000 for the fiscal year ending September 30, 1982, and not to exceed $4,247,000 for the fiscal year ending September 30, 1983[.] *and not to exceed $4,529,000 for fiscal year ending September 30, 1986.*

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Calendar No. 130

99TH CONGRESS
1st Session

SENATE

REPORT
99-54

NUCLEAR REGULATORY COMMISSION AUTHORIZATION

MAY 15 (legislative day, APRIL 15), 1985.—Ordered to be printed

Mr. SIMPSON, from the Committee on Environment and Public Works, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 895]

The Committee on Environment and Public Works, to which was referred the bill (S. 895) to authorize appropriations to the Nuclear Regulatory Commission in accordance with section 261 of the Atomic Energy Act of 1954, and section 305 of the Energy Reorganization Act of 1974, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

GENERAL STATEMENT

The bill, as reported, authorizes $437,000,000 for salaries and expenses of the Nuclear Regulatory Commission (NRC) for fiscal year 1986, $8,000,000 above the Commission's fiscal year 1986 request of $429,000,000. In authorizing this amount, the Committee has restored $8,000,000 in salaries and benefits to the Commission's fiscal year 1986 request, the amount of the proposed five percent pay reduction for federal employees. The authorization represents a decrease of $11,200,000 from the amount appropriated to the Commission for fiscal year 1985. The Committee's recommendation includes funding for the equivalent of 3,491 permanent staff positions.

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The bill also authorizes $437,000,000 for salaries and expenses for the agency for fiscal year 1987, $23,000,000 below the Commission's fiscal year 1987 request of $460,000,000. This amount reflects a freeze in the Commission's authorized funding level for fiscal year 1987 and includes funding for the equivalent of 3,491 permanent staff positions.

In testimony presented to the Committee, the Commission has stated that the funds requested by the Commission are sufficient to enable the Commission to carry out its statutory responsibilities to ensure adequate protection of the public health and safety. Based upon the Committee's review of the Commission's request, the Committee has concluded that the funds authorized in this bill, expended in a fashion consistent with the directives contained in the bill and in this report, will enable the Commission to satisfy that objective in an efficient and effective fashion.

There are three specific programs where the Commission's request for fiscal years 1986–1987 deleted or reduced funding below the amounts considered appropriate. Accordingly, the bill directs the Commission to reallocate funding to each of these three areas, in amounts sufficient to carry out the particular programs. These three areas, discussed in more detail below, are the Integrated Safety Assessment Pilot Program, the resolution of medium priority generic safety issues, and the research and regulatory activities associated with the Commission's implementation of the Nuclear Waste Policy Act. Additionally, in light of the severe reductions in the Commission's Office of Research over the past five years, no funds should be taken from the funds authorized for the Office of Research in order to carry out these three programs. Additional efficiencies can and should be achieved in other areas to provide the necessary funding for these three programs. Accordingly, the funding for these three programs shall be taken from areas other than the Office of Research.

DISCUSSION OF INTENT

Nuclear Reactor Regulation (Section 102.(a)(1))

SUMMARY

The bill includes an authorization of $91,000,000 for fiscal year 1986 and $91,000,000 for fiscal year 1987 for the activities of the Office of Nuclear Reactor Regulation (NRR).

DISCUSSION

The Commission requested an authorization of $88,930,000 for fiscal year 1986 and $95,470,000 for fiscal year 1987. The request provides for 718 permanent staff positions in fiscal year 1986 and 706 permanent staff positions for fiscal year 1987.

The bill, as reported, authorizes $91,000,000 for both fiscal year 1986 and 1987, an amount that includes funding for 718 permanent staff positions. The proposed five percent cut in salaries and benefits for staff in the Office of Nuclear Reactor Regulation has been restored, totaling $2,070,000.

The Office of Nuclear Reactor Regulation's primary responsibility is to ensure that the design, siting, construction, and operation of nuclear reactors adequately protect the public health and safety and the environment.

To achieve this objective, the budget request for NRR includes funding for operating reactors, operator licensing, casework, safety technology, and Three Mile Island-2 cleanup.

In approving the Commission's request for fiscal year 1986, the Committee is generally satisfied with the approach that the Commission has recommended for carrying out its responsibilities in a fashion that will ensure that operating reactors are operated safely and that the licensing process for reactors under construction will not unnecessarily delay the completion, testing, and startup of such reactors.

There are two specific areas, however, where it appears that the Commission has reduced or deleted funding for programs that are important to the agency's mission.

Integrated Safety Assessment Program

The Commission's budget request for fiscal year 1986 deleted all funding for the Integrated Safety Assessment Program (ISAP), deferring all activity in this area until fiscal year 1987.

According to testimony provided by the Commission, the objective of ISAP is to provide a comprehensive review of selected operating reactors to address all pertinent safety issues and to provide an integrated, cost-effective implementation plan based upon both deterministic and probabilistic evaluation techniques. This program will provide the technical basis to resolve outstanding licensing actions, establish overall plant improvement schedules, and serve as a benchmark from which future regulatory actions can be judged on a plant-specific basis. This program will also address outstanding TMI Action Plan requirements, and the implementation of generic issues and unresolved safety issues.

The Integrated Safety Assessment Program holds the potential for providing a means by which the Commission, working together with licensees, can resolve a large number of issues at an individual plant in a fashion that is disciplined and cost-effective. Moreover, the program is one in which the Commission has already devoted considerable resources, through Phases I and II of the Systematic Evaluation Program (SEP), in order to enable the Commission to proceed to this next step.

Accordingly, the bill, as reported by the Committee, directs the Commission to allocate such funds as may be necessary to carry out a pilot Integrated Safety Assessment Program. The program should be funded at a level that will enable the Commission to meet the objectives and particulars set forth in the Commission's letter of May 18, 1984 (transmitting to the Committee a report on the results of Phases I and II of SEP and a conceptual description of an Integrated Safety Assessment Program). Before proceeding beyond the pilot program described in the Commission's report, the Commission shall report back to the Committee on the results of the pilot program. Based upon that report, the Committee will consider whether further funding of the Integrated Safety Assessment Program is appropriate.

Medium priority safety issues

The second area in which the Commission has proposed to delete funding is the Commission's program for the resolution of medium priority generic safety issues.

The Committee is concerned that funding for the resolution of these issues has been deleted from the Commission's budget request. According to testimony presented to the Committee, medium priority generic safety issues are those issues where:

> [N]o safety deficiency demanding high-priority attention is involved, but there is believed to be potential for safety improvements or reductions in uncertainty of analysis that may be substantial and worthwhile, though less so than for items assigned a high priority. Efforts at resolution should be planned, perhaps over the next several years, but on a basis of not interfering with pursuit of high-priority generic issues or other high-priority work.

In addition, in response to questions submitted to the Commission by the Committee, the Commission has indicated that:

> [W]ith high-priority issues there is a high expectation that their resolution will involve imposition of some new or strengthened safety requirements. There is no clear basis for such an expectation with medium-priority issues. Rather, a clear assessment of the safety significance of medium priority issues must await the results of efforts at resolution. At the outset of such efforts, there is a substantial possibility that the safety significance will indicate a need for regulatory action and also a substantial possibility that no action will be warranted. As work progresses and its outcome becomes clearer, efforts to complete resolution may be intensified or dropped.

Although the Committee recognizes that difficult choices must be made when deciding which programs to cut in a period of reduced funding, the Committee is of the view that no such cuts should be made in those Commission programs necessary to protect the public health and safety. The responsibility for protecting the public health and safety is the Commission's most fundamental and important mandate. Accordingly, the bill, as reported, directs the Commission to allocate such funds as may be necessary to continue the Commission's efforts in this area. The Commission, in accordance with its earlier plans, should provide sufficient funding to address and resolve medium priority generic safety issues.

In regard to the funding of medium priority generic safety issues, the lack of any significant progress in the Commission's efforts to carry out the directives of section 8 of P.L. 97-415, requiring the Commission to undertake a pilot program for the testing and evaluation of a prototype nuclear data link, is particularly disturbing.

This Committee has long supported, and continues to support, the Commission's effort to improve its ability to communicate expeditiously and reliably with NRC regional offices, NRC on-site representatives, NRC licensees, and States in the event of an accident at a commercial nuclear powerplant.

Indeed, numerous significant shortcomings in this specific area were identified during the Three Mile Island accident by various groups that studied the TMI accident and virtually without exception the studies decried the poor state of communications during the accident and recommended major improvements.

Accordingly, the Congress authorized the Commission to proceed with a program—the "Nuclear Data Link" program—to address these shortcomings in the NRC's Authorization Act for fiscal years 1982 and 1983. Unfortunately, very little progress has been made in addressing this issue. As a result, the state of affairs today has not improved significantly since the time of the TMI accident over six years ago.

Therefore, in accordance with the Committee's directive to fund the resolution of medium priority generic safety issues, the Commission shall allocate not less than $1,000,000 for the purpose of carrying out section 8 of P.L. 97-415, in order to resolve the nuclear data link generic safety issue.

INSPECTION AND ENFORCEMENT (SECTION 102.(A)(2))

SUMMARY

The bill includes an authorization of $95,780,000 for fiscal year 1986 and $95,780,000 for fiscal year 1987 for the activities of the Office of Inspection and Enforcement (IE).

DISCUSSION

The Commission requested an authorization of $92,890,000 for fiscal year 1986 and $101,330,000 for fiscal year 1987. The request provides for 1,142 permanent staff positions in fiscal year 1986 and 1,158 permanent staff positions in fiscal year 1987.

The bill, as reported, authorizes $95,780,000 for both fiscal years 1986 and 1987, an amount that includes funding for 1,142 permanent staff positions. The proposed five percent cut in salaries and benefits for staff in the Office of Inspection and Enforcement has been restored, totaling $2,890,000.

The purpose of the Commission's Inspection and Enforcement program is to ensure that facilities and materials under the NRC's jurisdiction are constructed, operated, and used in a manner that protects the public health and safety and the environment, and to take prompt and vigorous enforcement action against licensees who do not comply with NRC regulation. This program consists primarily of: (1) nuclear powerplants under construction, being tested, or in commercial operation, and nonpower (test and research) reactors; (2) fuel facilities and nuclear materials licensees; and (3) nuclear steam system suppliers, nuclear architect-engineers, and other major nuclear system component supplies.

The Office of Inspection and Enforcement has sufficient resources and personnel to enable it to meet its responsibilities in the above areas under the Commission's request for fiscal year 1986. Accordingly, the bill, as reported from Committee, endorses the proposed programs, funding levels, and staffing levels set forth in the Commission's fiscal year 1986 request. The bill provides that funding and staff for fiscal year 1987 will remain at the fiscal year 1986 level.

NUCLEAR MATERIAL SAFETY AND SAFEGUARDS (SECTION 102.(A)(3))

SUMMARY

The bill includes an authorization of $41,660,000 for fiscal year 1986 and $41,660,000 for fiscal year 1987 for the activities of the Office of Nuclear Material Safety and Safeguards (NMSS).

DISCUSSION

The Commission requested an authorization of $40,730,000 for fiscal year 1986 and $44,870,000 for fiscal year 1987. The request provides for 370 permanent staff positions for both fiscal years 1986 and 1987.

The bill, as reported, authorizes $41,660,000 for both fiscal years 1986 and 1987, an amount that includes funding for 370 permanent staff positions. The proposed five percent cut in salaries and benefits for staff in the Office of Nuclear Material Safety and Safeguards has been restored, amounting to $930,000.

The primary objectives of the Office of Nuclear material Safety and Safeguards are to ensure adequate protection of the public health and safety and the environment in the design, siting, construction, and operation of nuclear fuel cycle facilities, including nuclear waste storage and disposal facilities, and in the use and transportation of nuclear materials. NMSS is responsible for performing the safety, environmental, and safeguards reviews of applications for fuel cycle facility licenses, and the amendment and renewal of such licenses. NMSS is also responsible for licensing the use of nuclear materials and for regulating the design of containers used for transporting nuclear materials. In addition, NMSS is responsible for conducting reviews of the safeguards plans for power and non-power reactors.

The Commission's request for fiscal year 1986, and the approach that the Commission has recommended for carrying out its responsibilities in the above areas, are generally satisfactory.

There is one area, however—the high-level waste program—where it appears that the Commission's proposed reductions in funding would adversely affect the Commission's abilities to meet its statutory responsibilities. Accordingly, the bill, as reported, directs the Commission to allocate such funds as may be necessary to fully meet its responsibilities under the "Nuclear Waste Policy Act of 1982" (NWPA).

In the Commission's testimony on its budget request for fiscal years 1986 and 1987, the Commission stated that the lack of adequate funding for the Commission's high-level waste program would, in all likelihood, result in delays in the Department of Energy's program for implementing the NWPA. In materials submitted to the Committee, the Commission pointed out that:

> This moves NRC to the constraining critical path item for the national program. The actual delays are estimated to be two to six months. The impact of these delays is a perception that the federal agencies involved in this pro-

> gram cannot conceive and manage a program that provides public confidence in the continuation of nuclear power as a viable option for the nation's energy needs.

The Committee believes that these potential delays are unacceptable and can and should be avoided. Accordingly, the bill directs the Commission to allocate such funds as may be necessary to ensure that the Commission's high-level waste regulatory and research activities are carried out in a timely manner.

In this regard, the Committee notes that section 114(e) of the NWPA directs the Secretary of Energy to establish a Project Decision Schedule, setting forth "a description of objectives and a sequence of deadlines for all Federal agencies required to take action, including an identification of the activities in which a delay in the start, or completion, of such activities will cause a delay in beginning repository operation." The Department of Energy has advised the Committee that a preliminary draft Project Decision Schedule has been circulated for comment, and that a draft Project Decision Schedule will be available for further comment in the near future. Following receipt of comments, the Department of Energy intends to finalize the Project Decision Schedule in September of 1985.

The Project Decision Schedule has not yet been published in final form. As provided in section 114(e), the Project Decision Schedule must be prepared in cooperation with all affected Federal agencies—a process that is, at this time, still underway. The Committee does not intend to express a view with respect to the approach to be taken by the Department of Energy in establishing the Project Decision Schedule, nor with respect to the manner in which individual agency comments should be resolved.

The Project Decision Schedule called for under section 114(e) is intended to portray "the optimum way to attain the operation of [a] repository." Accordingly, the Commission should make available all funds necessary to meet its responsibilities under the NWPA, in a manner that is consistent with the Commission's statutory responsibilities, and in a fashion that will achieve the objectives and meet the deadlines established in the Project Decision Schedule, when that document is published in final form. However, the Commission is expected to be fully prepared to take all necessary and appropriate steps to ensure that its role in the licensing of any nuclear waste facility is sufficient to ensure that the public health and safety is protected and satisfies the Commission's independent licensing and regulatory responsibilities.

Nuclear Regulatory Research (Section 102.(a)(4))

SUMMARY

The bill includes an authorization of $136,570,000 for fiscal year 1986 and $136,570,000 for fiscal year 1987 for the activities of the Office of Nuclear Regulatory Research (RES).

DISCUSSION

The Commission requested an authorization of $235,970,000 for fiscal year 1986 and $145,800,000 for fiscal year 1987. The request provides for 208 permanent staff positions for both fiscal years 1986 and 1987.

The bill, as reported, authorizes $136,570,000 for both fiscal years 1986 and 1987, an amount that includes funding for 208 permanent staff positions. The proposed five percent cut in salaries and benefits for staff in the Office of Nuclear Regulatory Research has been restored, amounting to $600,000.

The Office of Nuclear Regulatory Research has the responsibility and authority under the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, to perform regulatory research in support of the nuclear regulatory process and improved reactor safety. The basic objective of the research program is to develop a sound and complete base of technical information on basic safety issues as an independently verified source of safety, health, and environmental information to be used together with information furnished by applicants or licensees as a basis for licensing and regulatory decisions. An important part of this activity is the development of safety data and analytical methods to support Commission rulemaking activities and policy determinations, and formulation of rules and regulatory requirements for Commission consideration.

Further reductions in funding for the NRC's Office of Research are cause for concern. As stated in the Committee's 1984 report on the Commission's fiscal year 1984-1985 authorization:

> [T]he increasingly frequent practice of turning to the research budget to fund other programs or to achieve reductions in the overall funding level for the agency is of concern to the Committee because it not only threatens the solid nucleus of research talent now available to the NRC, but also makes it extremely difficult to plan for the long-term research needs of the agency. (S. Rept. 98-546, p. 9)

Unfortunately, the budget request submitted by the Commission proposes further reductionis in the Commission's essential research activities, notwithstanding the guidance set forth in the Committee's report on the Commission's authorization for fiscal years 1984-1985 (P.L. 97-415).

Continuing reductions in the Commission's research program threaten the essential nucleus of talent in the national laboratories necessary to carry out these activities. Such continued reductions raise a fundamental question as to whether it is cost-effective or sensible to continue to fund a research program at all, when the ability of the Commission to provide the necessary and essential support has been decimated. The Commission's own Advisory Committee on Reactor Safeguards concluded that the Commission's proposed NRC Safety Research Program for fiscal year 1986 is "barely acceptable".

Therefore, the Committee has authorized $136,570,000 for research activities for both fiscal years 1986 and 1987, with the proviso that no further reductions shall be taken in the research funding level established in the bill in order to fund any other programs or activities set forth in NRC's request or specified in this bill. The Committee will continue to monitor the Commission's research program in careful detail. If funding for the Commission's research activities declines further, to the point where it has become difficult, if not impossible, to carry out a coherent and useful research program in support of the Commission's regulatory responsibilities, the Congress must decide what further action is appropriate and what role can and should be played by the Commission's research program.

PROGRAM TECHNICAL SUPPORT (SECTION 102.(a)(5))

SUMMARY

The bill includes an authorization of $30,210,000 for fiscal year 1986 and $30,210,000 for fiscal year 1987 for the activities of the Office of Program Technical Support.

DISCUSSION

The Commission requested an authorization of $29,300,000 for fiscal year 1986 and $30,000,000 for fiscal year 1987. The request provides for 352 permanent staff positions in fiscal year 1986 and 348 permanent staff positions in fiscal year 1987.

The bill, as reported, authorizes $30,210,000 for both fiscal years 1986 and 1987, an amount that includes funding for 352 permanent staff positions. The amount of the proposed five percent cut in salaries and benefits for staff in the Office of Program Technical Support has been restored, amounting to $910,000.

PROGRAM DIRECTION AND ADMINISTRATION (SECTION 102.(a)(6))

SUMMARY

The bill includes an authorization of $41,780,000 for fiscal year 1986 and $41,780,000 for fiscal year 1987 for the activities of the Office of Program Direction and Administration.

DISCUSSION

The Commission requested an authorization of $41,180,000 for fiscal year 1986 and $42,530,000 for fiscal year 1987. The request provides for 701 permanent staff positions for both fiscal years 1986 and 1987.

The bill, as reported, authorizes $41,780,000 for both fiscal years 1986 and 1987, an amount that includes funding for 701 permanent staff positions. The proposed five percent cut in salaries and benefits for staff in Program Direction and Administration has been restored, amounting to $600,000.

RESEARCH GRANTS AND COOPERATIVE AGREEMENTS WITH UNIVERSITIES (SECTION 102.(b))

Subsection 102.(b) of the bill authorizes the Commission to use up to one percent of the amounts authorized for the Office of Nuclear Regulatory Research for the purpose of making research grants and other research arrangements with universities.

REPROGRAMMING (SECTION 102.(c))

SUMMARY

Section 102.(c) of the bill authorizes the Commission to reallocate authorized funds among programs, provided certain specified conditions are satisfied.

DISCUSSION

This provision requires the Commission to notify the authorizing Committees of any intended action to transfer more than $500,000 between program offices, or between specific activities within a single program office. Under this provision, the authorizing committees have thirty legislative days to review the Commission's proposed action and to comment thereon. The Commission is authorized to proceed with its proposed reallocation prior to the expiration of the 30-day period following submission to the authorizing committees of the Commission's "full and complete statement" of the proposed action to be taken, if each authorizing committee transmits to the Commission a written notification that the Committee does not object to the proposed action.

The Committee expects that the Commission will give substantial weight to written comments forwarded to it by any of the authorizing committees concerning any proposed action to reprogram amounts in excess of $500,000.

Based upon testimony presented by the Commission and recent reprogramming requests submitted to this Committee, it appears as if there may be some confusion as to exactly what is required of the Commission under this provision, and the circumstances to which this provision applies. This provision is intended to apply to all reprogramming requests, as described above. While this does not include those adjustments required to reflect whatever differences there might be in amounts authorized to be appropriated and amounts actually appropriated, for purposes of making such changes, the initial base from which changes are to be made is the amount (including line-item funding levels) authorized in the Commission's authorization legislation. Any other adjustments in funding levels, if in excess of $500,000 (with the exception of unobligated carryover and prior year deobligated funds), are subject to the reprogramming requirements of this section.

COOPERATIVE RESEARCH AND MATERIAL ACCESS AUTHORIZATION FUNDING (SECTION 103)

This section authorizes the Commission to use funds received for the cooperative nuclear safety research programs and the material access authorization program for salaries and expenses associated with those programs.

TRANSFER OF FUNDS (SECTION 104)

This section authorizes the Commission to transfer funds to other agencies of the federal government for the performance of certain activities by such agencies.

LIMITATION ON FUNDS (SECTION 105)

This section prohibits the Commission from making payments under this Act, except as provided in advance in appropriation Acts.

UTILITY EMERGENCY PREPAREDNESS PLANS (SECTION 106)

This section reconfirms the authority of the Nuclear Regulatory Commission to issue an operating license for a nuclear powerplant in the absence of a State or local emergency preparedness plan if it determines that there exists a utility emergency preparedness plan which provides reasonable assurance that public health and safety will not be endangered by operation of the plant.

FEDERAL REGISTER NOTICE REQUIREMENT (SECTION 201)

SUMMARY

This section amends Section 274.(e)(1) of the Atomic Energy Act of 1954 to eliminate duplicative Federal Register Notices relating to the Commission's Agreement State program.

DISCUSSION

This section authorizes the Commission to enter into an agreement with a State under which the Commission relinquishes its authority to regulate certain nuclear materials, upon publishing notice of such agreement once in the Federal Register. Section 274.(e)(1) of the Atomic Energy Act currently requires the Commission to publish notice of such agreements once each week for four consecutive weeks in the Federal Register. In proposed legislation submitted to the Congress by the Commission on March 12, 1985, the Commission recommended reducing the number of required Federal Register notices from four to one. According to the Commission's Legislative Memorandum in Support of the Proposed Bill, this change would save the Commission approximately $13,000 each time the Commission proposes to enter into such an agreement. In the view of the Committee, this proposed change is reasonable and will conserve limited Commission resources. This proposed approach is also consistent with the requirements of the Administrative Procedure Act and with the Commission's general practice in those areas involving notification of the public through the Federal Register. Accordingly, this section provides that such agreements can be entered into upon publication once in the Federal Register, rather than the four times currently required.

HEARINGS

The Committee held one hearing and heard from five witnesses in order to develop a public record for Committee review and action on this bill.

At a hearing of the Committee on Environment and Public Works on March 7, 1985 on budget authorizations for agencies under the Committee's jurisdiction, Chairman Nunzio J. Palladino submitted for the record a budget statement and an overview of the NRC's budget request. Testimony on the NRC's budget request for fiscal years 1986 and 1987 was presented by Chairman Palladino and Commissioners James K. Asselstine, Frederick M. Bernthal, and Lando W. Zech, Jr. Supporting testimony for the record was supplied by William J. Dircks, Executive Director for Operations; Harold R. Denton, Director, Office of Nuclear Reactor Regulation; James M. Taylor, Director, Office of Inspection and Enforcement; John G. Davis, Director, Office of Nuclear Material Safety and Safeguards; and Robert B. Minogue, Director, Office of Nuclear Regulatory Research.

COST OF LEGISLATION

Section 252.(a)(1) of the Legislative Reorganization Act of 1970 requires publication of the Committee's estimate of the costs of reported legislation, together with estimates prepared by any Federal agency. The estimate for fiscal year 1986 is $437 million. The estimate for fiscal year 1987 is $437 million.

While it is contemplated that most programs will continue beyond fiscal year 1987, future funding levels depend upon decisions which have not yet been made. Following are estimates for projected NRC budget authority, based upon NRC information:

Fiscal years:	*Estimate in millions*
1986	$437.0
1987	437.0
1988	460.0
1989	460.0
1990	460.0

Section 403 of the Congressional Budget and Impoundment Control Act requires each report to contain a statement of the cost of the reported bill prepared by the Congressional Budget Office. That report follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 8, 1985.

Hon. ROBERT T. STAFFORD,
Chairman, Committee on Environment and Public Works, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for S. 895, a bill to authorize appropriations to the Nuclear Regulatory Commission for fiscal year 1986 and fiscal year 1987.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

RUDOLPH G. PENNER.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 895
2. Bill title: a bill to authorize appropriations to the Nuclear Regulatory Commission for fiscal year 1986 and fiscal year 1987.

3. Bill status: As ordered reported by the Senate Committee on Environment and Public Works, May 2, 1985.

4. Bill purpose: This bill authorizes the appropriation of $437 million for the Nuclear Regulatory Commission (NRC) for each of the fiscal years 1986 and 1987. The fiscal year 1986 authorization is $8 million higher than the President's request. The President's request incorporates a proposed 5 percent pay cut for NRC staff; the $437 million level would allow for the same program level of NRC activity as proposed by the President, but without a pay cut. The bill also authorizes the NRC to issue an operating license for a nuclear power reactor in the absence of a federally approved state or local emergency preparedness plan, if the NRC determines that there exists a state, local or utility plan which provides reasonable assurance of public health and safety.

5. Estimated cost to the Federal Government:

[By fiscal years, in millions of dolars]

	1986	1987	1988	1989	1990
Authorization level	437	437			
Estimated outlays	284	437	153		

The costs of this bill fall within budget function 270.

Basis of estimate: For the purposes of this estimate, it is assumed that this bill will be enacted and that the entire amounts authorized will be appropriated prior to the beginning of each fiscal year. The estimated annual outlays are based on the historical spending patterns for the NRC's programs. Any funds collected for cooperative research or access authorizations are expected to recover the costs incurred for those activities, thereby resulting in no net budget impact.

6. Estimated cost to state and local governments: None.

7. Estimate comparison: None.

8. Previous CBO estimate: On May 7, 1985, the Congressional Budget Office prepared a cost estimate for H.R. 1711, a similar bill ordered reported by the House Committee on Interior and Insular Affairs. S. 895 authorizes $15 million less for 1986 through 1987 than H.R. 1711, which authorizes $429 million for fiscal year 1986 and $460 million for fiscal year 1987.

9. Estimate prepared by: Pete Fontaine.

10. Estimate approved by: C.G. Nuckols (for James L. Blum, Assistant Director for Budget Analysis).

EVALUATION OF REGULATORY IMPACT

In compliance with section 11(b)(1) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact of the reported bill:

The bill has no impact on personal privacy of individuals.

The bill has no effect on paperwork, except to the extent that it will facilitate efficient proceedings by the agency and thereby reduce paperwork and delay.

There is no specific economic impact of this bill, although regulatory actions taken under the basic authority of the agency do have an economic impact by applying certain requirements and standards to such businesses as nuclear power plants, fuel production facilities, and suppliers thereof.

Recordkeeping requirements are not changed from existing law.

ROLLCALL VOTES

Section 133 of the Legislative Reorganization Act of 1970 and the rules of the Committee on Environment and Public Works require that any rollcall votes taken during consideration of this bill be announced in this report.

No rollcall votes were taken during the Committee's consideration of this legislation. The bill was ordered reported by voice vote.

ADDITIONAL VIEWS OF SENATOR BENTSEN

NRC Authorization

I am pleased that the Committee has reaffirmed its interest in assuring that the Nuclear Regulatory Commission maintains its independent function under the Nuclear Waste Policy Act by earmarking funds for this purpose under Section 102.(a). Under that Act, the Department of Energy is charged with siting and developing repository for high-level nuclear waste. The NRC, as an independent licensing authority, is charged with overseeing many of DOE's activities.

States that have been exposed to DOE's site selection process thus far may be in a position to best appreciate the need for this oversight. To date, DOE has failed to respond effectively to issues of public concern. The siting and operation of a high nuclear waste repository is an issue of such high profile that all high-level waste activities must be undertaken with the greatest of care. The involvement of two Federal agencies in different capacities is an essential factor in assuring public trust in the program. Funding to assure that NRC can fulfill its responsibilities under the Act is, in turn, a minimal requirement for protecting the public health and safety and the environment. I strongly support this provision of the bill.

Lloyd Bentsen.

CHANGES IN EXISTING LAW

In compliance with section 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows: Existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman.

ATOMIC ENERGY ACT OF 1954 (42 U.S.C. 2021)

SEC. 274. COOPERATION WITH STATES.—

* * * * * * *

e.(1) Before any agreement under subsection b. is signed by the Commission, the terms of the proposed agreement and of proposed exemptions pursuant to subsection f. shall be published [once each week for four consecutive weeks] in the Federal Register, and such opportunity for comment by interested persons on the proposed agreement and exemptions shall be allowed as the Commission determines by regulation or order to be appropriate.

○

Calendar No. 131

99TH CONGRESS
1st Session

SENATE

REPORT
99-56

SAFE DRINKING WATER ACT AMENDMENTS OF 1985

MAY 15 (legislative day, APRIL 15), 1985.—Ordered to be printed

Mr. DURENBERGER, from the Committee on Environment and Public Works, submitted the following

REPORT

[To accompany S. 124]

The Committee on Environment and Public Works, to which was referred the bill (S. 124) the Safe Drinking Water Act Amendments of 1985, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

GENERAL STATEMENT

The Safe Drinking Water Act Amendments of 1985 establish new procedures and deadlines for the setting of national primary drinking water standards, modify public water system requirements, establish a national monitoring program for unregulated contaminants, augment underground waste injection control requirements, improve enforcement authority under the Act and establish a sole source aquifer demonstration program.

PURPOSE AND BACKGROUND

The Safe Drinking Water Act was enacted in 1974 in order to assure that all citizens served by public water systems would be provided high quality water supplies. Detection of synthetic organic chemicals in the water supplies of a number of cities in the early 1970's serve as the impetus behind the Act's reforms. The Act established a program to require compliance with national drinking water standards for contaminants that may have an adverse effect on the health of persons. As an addition to the Public Health Act, the Safe Drinking Water Act focused on the removal of contaminants found in water supplies as a preventive health measure.

S323-10

The Act also established programs intended to protect underground sources of drinking water from contamination. Ground water resources currently supply drinking water for approximately 50 percent of the U.S. population. Provisions in the Act established restrictions on the underground injection of hazardous and nonhazardous waste and provide authority for protection of designated sole or principal source aquifers.

Over the past decade, the Safe Drinking Water Act has improved compliance with basic drinking water standards. However, recent national surveys of surface and ground water supplies indicate the presence of hundreds of synthetic organic chemicals in water supplies, with a significant number of systems having one or more toxic chemicals in at least trace amounts. In addition, the problems of viral and bacterial contamination of water supplies have not been eliminated. EPA figures indicate that the incidence of waterborne disease has recently been increasing.

It is clear that the national goal of safe drinking water has not been fulfilled and the aims of the Safe Drinking Water Act have never been more essential.

The amendments were developed to rectify major deficiencies in the implementation of programs established under the Act. While there has been improved compliance with existing drinking water standards, the Environmental Protection Agency has established standards for only a small fraction of the contaminants that are found in public water systems and that may have an adverse effect on human health. In order to address this fundamental deficiency, the bill establishes schedules and deadlines for standard-setting, requires simultaneous promulgation of drinking water standards and goals, and requires that standards be set as close to health level goals as feasible with the use of best available technology.

Monitoring is the method by which contaminants are identified in drinking water. Public water systems are required to monitor for regulated contaminants. Due to the absence of standards for drinking water contaminants of significant public health concern, the detection of such contamination has not occurred. To remedy this deficiency, the bill establishes a monitoring program for unregulated contaminants to provide a systematic check on the quality of each public water system's supply.

The problem of viral and bacterial contamination of drinking water supplies is addressed in the bill by the requirements that EPA issue criteria specifying those systems which must filter their surface water supplies and promulgate regulations requiring disinfection of all public water systems.

Other provisions in the bill require EPA to amend existing public notification requirements to make them more timely and informative and authorize $10 million per year to provide technical assistance to small systems which have had chronic noncompliance problems.

Amendments pertaining to the protection of underground sources of drinking water are intended to enhance existing protection. EPA is required to promulgate ground water monitoring regulations for hazardous waste injection operations and to issue a report on problems with existing Class V wells, which may inject non-hazardous waste into or above an underground source of drinking water. In addition, a sole source aquifer demonstration program is established for the purpose of providing protection of particularly critical ground water supplies and assessing the effectiveness of specific protection measures.

Finally, the bill provides EPA new enforcement authority for public water system and ground water protection programs established under the Act to assure timely and effective enforcement of existing and new regulatory requirements.

SECTION-BY-SECTION SUMMARY AND DISCUSSION

SECTION 1. SHORT TITLE

SECTION 2. NATIONAL PRIMARY DRINKING WATER REGULATIONS

SUMMARY

This section of the bill makes changes in terminology for setting standards, includes requirements for schedules and deadlines, and revises the basis for setting maximum contaminant levels.

Standard-Setting Terminology

There are two changes in standard-setting terminology. The bill eliminates the distinction between "interim"and "revised" standards, removing both terms from the Act, and designates "interim" regulations under existing law as national primary drinking water regulations. The bill also changes the term used to refer to the health effects level set before the promulgation of a drinking water standard from "recommended maximum contaminant level" to "maximum contaminant level goal".

Standard-Setting Schedules

EPA is required to promulgate national primary drinking water regulations for a total of 85 contaminants published by the Agency in two advance notices of prospposed rulemaking according to the following schedule: at least nine contaminants within 12 months of enactment, at least 40 additional contaminants within 24 months, and the remainder of the list within 36 months. Thus, standards are required to be set for all 85 contaminants within 3 years of enactment.

On January 1, 1988, and at 3 year intervals thereafter, the Administrator is required to publish a list of additional contaminants that may have an adverse effect on the health of persons. The Administrator is to establish a working group with representatives from the appropriate EPA offices and the National Toxicology Program to assist in the development of the list. Within 36 months of listing, EPA is required to publish maximum contaminant level goals and promulgate maximum contaminant levels for not less than 25 contaminants from the list.

Basis for Standard-Setting

Maximum contaminant level goals established by EPA are to be set at the level at which no known or anticipated adverse effects on the health of persons occur and which allows an adequate margin of safety. Maximum contaminant levels in the national primary drinking water regulations are to be set at a level as close to the goal as is feasible with the use of the best technology, treatment techniques and other means which the Administrator finds are available (taking cost into consideration). The bill establishes that the use of granular activated carbon is available for the control of synthetic organic chemicals. Any technology, treatment technique, or other means found to be the best available for the control of synthetic organic chemicals must be at least as effective as granular activated carbon.

Each regulation promulgated by EPA which sets a maximum contaminant level shall list the technology, techniques and other means which the Administrator finds to be available for meeting the maximum contaminant level but shall not require that a specific technology be used for the purposes of meeting a maximum contaminant level.

Treatment Technique Requirements

The bill authorizes EPA to promulgate a drinking water regulation that requires the use of a treatment technique to remove a contaminant rather than one that sets a maximum contaminant level of the Administrator finds that it is not technologically or economically feasible to ascertain the level of the contaminant.

Not later than 18 months after enactment, EPA is required to propose and promulgate regulations specifying criteria under which filtration (including coagulation and sedimentation) is required as a treatment technique for public water systems supplied by surface water sources. States with primary enforcement responsibility are required to adopt such regulations within 18 months of their establishment and to make individual system determinations within 12 months of such adoption.

Not later than 36 months after enactment, the Administrator is required to propose and promulgate regulations requiring disinfection as a treatment technique for all public water systems and to promulgate a rule specifying criteria that will be used to grant variances from this requirement under the Act. The Administrator or the delegated State authority are directed to provide technical assistance to the extent feasible to small systems complying with disinfection regulations.

Revision of Standards

Section 1412 of the Act requires the Administrator to review drinking water standards every three years and revise such standards whenever changes in technology, treatment techniques or other means of achieving compliance with applicable standards permit greater protection of the health of persons. This requirement is amended to require that an analysis of such changes be published in the Federal Register. If, after opportunity for public comment, the Administrator concludes that changes are not available to permit greater health protection, an explanation of such conclusion must be published in the Federal Register.

Science Advisory Board

The Administrator is required to provide the Science Advisory Board, established under the Environmental Research, Development and Demonstration Act of 1978, an opportunity to comment prior to proposal or during the public comment period on maximum contaminant level goals and national primary drinking water regulations.

DISCUSSION

The Committee's primary objective in making changes to section 1412 of the Act is to expedite the process of establishing national primary drinking water regulations, which are intended to provide the regulatory foundation for the statute. With one class of chemicals as an exception, there are no standards for synthetic organic chemicals, which are of great public health concern. The changes to existing administrative standard-setting procedures were made to expedite regulation of contaminants in drinking water and to require regular review of regulations to make them more protective of public health whenever possible.

The Committee is also concerned that standards for synthetic organic chemicals and other contaminants potentially harmful to human health be protective of human health.

Standards set by the Administrator are to be protective of public health. While cost and technology are factors to be considered in establishing maximum contaminant levels under the Act, the first priority of the Act is to protect human health by reducing or preventing human exposure to potentially harmful contaminants in drinking water.

Standard-Setting Terminology

In 1975, EPA promulgated interim drinking water regulations for 18b substances which were derived from U.S. Public Health service guidelines issued in 1962. The Agency was required to revise these standards by 1977 based on the health effects recommendations of the National Academy of Sciences. These recommendations have not been forthcoming. Revised standards have been set for only two classes of contaminants—trihalomethanes and radium.

The distinction between interim and revised drinking water regulations is no longer relevant under the standard-setting procedures prescribed in this bill. Therefore, the bill deletes the requirements that EPA issue revised national primary drinking water regulations and deems existing national interim primary drinking water regulations to be national priority drinking water regulations. Existing interim regulations need not comply with the new requirements set forth in amendments to section 1412(b)(2) until those regulations are amended to establish different maximum contaminant levels. This change does not affect the rule-making status of those substances for which there are existing interim regulations and which are included in the list published in volume 48, Federal Register, page 45502.

Standard-Setting Schedules

The greatest problem with implementation of the program established by the Safe Drinking Water Act is the failure of EPA to issue standards for most contaminants known or anticipated to be found in drinking water. The vital need for such standards is exemplified by the fact that a number of States have been forced to expend their limited resources to develop standards in the absence of Federal regulations. National drinking water standards are the cornerstone of the Safe Drinking Water Act and their establishment is most appropriately a Federal responsibility. The standard-setting schedules and deadlines established by the bill are intended to produce certain results in a program that has been wrought with uncertainty.

The 3 year schedule designated in the bill for promulgation of national primary drinking water regulations coincides with ongoing Agency rulemaking activities with respect to these listed contaminants. The Committee incorporated this schedule in recognition of the fact that where deadlines are mandatory, they must also be realistic.

The Administrator is to publish a list of additional contaminants no later than January 1, 1988, and at 3 year intervals thereafter, which are to serve as the basis for standard-setting activities after the standards discussed above have been promulgated. The Administrator is required to establish a working group comprised of representatives from the National Toxicology Program and the EPA Offices of Drinking Water, Pesticides, Toxic Substances, Ground Water, Solid Waste and Emergency Response and any others the Administrator deems appropriate. The purpose of establishing this advisory group is to assure that those responsible for the regulation of toxic substances and knowlegeable about contaminant pathways and their potential health effects participate in compiling a list that reflects collective and relative concerns about specific contaminants known or anticipated to occur in public water systems.

Within 24 months of publishing the priority list, the Administrator is required to propose maximum contaminant level goals and drinking water regulations for a minimum of 25 contaminants deemed by the Administrator to be of public health concern. Within 36 months of listing, the Administrator must promulgate regulations for these contaminants.

Basis for Standard-Setting

The bill requires that maximum contaminant levels be set as close to the maximum contaminant level goal as is feasible with the use of the best technology, treatment techniques and other means the Administrator finds available (taking cost into consideration). The Committee made the change from the current "generally available technology" terminology for two reasons; to expedite the standard-setting process by defining the technology principle to be used as the basis for establishing maximum contaminant levels and to assure that such standards reflect the full extent of current technology capability to move toward achievement of the health effects goal. The determinants of technological capability are effectiveness and economic feasibility. In order to provide a frame of reference for effectiveness and cost determinations, the bill specifies that granular activated carbon technology is available for removal of synthetic organic chemicals.

There are significantly different types of granular activated carbon that may be available for control of some synthetic organic chemicals. Variables would include plant scale and design, grade of carbon used, contact time, and frequency of carbon regeneration. The Administrator should weigh these and other factors with respect to their effectiveness and cost when determining which type of granular activated carbon should be assumed as the basis for establishing a maximum contaminant level for any synthetic organic chemical.

There may be some cases where the granular activated carbon treatment that has been used as the basis for establishing a maximum contaminant level may not be the most effective technology for removal of particular synthetic organic chemicals. For example, some volatile organic chemicals may be removed at higher levels and at lower cost by the application of aeration techniques under certain conditions. And, some disinfection byproducts, including trihalomethanes, may be removed as effectively at a lower cost with the use of technologies other than granular activated carbon.

In recognition of the needed for flexibility for individual systems in complying with established maximum contaminant levels, the Administrator will not require public water systems to install the specific "best available technology" used to derive the maximum contaminant level but specify various feasible technologies which may be used to attain such maximum contaminant levels. Public water systems may use alternative technologies, treatment techniques and other means found to be effective to come into compliance with maximum contaminant levels. The definition of feasibility based on best available technology (taking cost into consideration) applies to the establishment of a maximum contaminant level. No comparable change has been made in existing law with respect to the promulgation of treatment technique requirements.

Treatment Technique Requirements

Contamination of drinking water supplies by synthetic organic chemicals is not the only health problem faced by public water systems. Incidences of water borne disease continue to occur. According to EPA estimates for the period from 1978–1982 an average of 9,800 cases per year were reported with 80%–90% of the cases unreported. The increasing incidence of such contamination is attributed to a number of factors, including development of previously protected watersheds. Filtration and disinfection techniques have been widely proven to be effective in removing bacterial and some viral contaminants from water. The bill requires the Administrator to promulgate treatment technique regulations for filtration and disinfection to assure that all public water systems are providing basic health protection to their customers.

EPA has authority under the existing statute to promulgate such a treatment technique requirement but has not done so.

The bill requires the Administrator to promulgate national primary drinking water regulations specifying criteria under which filtration (including coagulation and sedimentation) is required as a treatment technique for public water systems supplied by surface water sources. These criteria must protect the public from bacterial and viral contamination.

States with primary enforcement responsibility are given 18 months to adopt any regulations necessary to implement filtration requirements. Within 12 months of adoption of such regulations the primary enforcement authority is required to make determinations regarding filtration for all surface water systems within its jurisdiction. States, or EPA in non-delegated States, may require public water systems to provide studies or information to assist in making such determinations. Notice and opportunity for public hearing on determinations will be provided. If filtration is required, the State, or EPA in non-delegated States, must prescribe a schedule and require compliance within 18 months of a determination.

Within 36 months of enactment of the bill, EPA is required to propose and promulgate regulations requiring disinfection as a treatment technique for all public water systems. the Administrator shall simultaneously promulgate a rule specifying criteria that will be used by EPA or delegated State authorities to grant variances to systems that do not need to disinfect their water supply to provide basic health protection from bacterial contaminants.

Revision of Standards

National primary drinking water regulations are based on the best available technology at a certain point in time. Technological innovations or the development of more cost-effective means of contaminant levels closer to health effects levels consistent with the public health objective of the Act.

Although the Administrator is currently required to review revised national primary drinking water regulations at least every 3 years and amend the regulations whenever changes in technology, treatment techniques and other means permit greater protection of the health of persons, only one such regulation has been reviewed and revised by the Agency.

In order to emphasize the law's requirement that these reviews be conducted, the bill requires that they include an analysis of innovations or changes in technology, or treatment techniques that have occurred over the 3 year period and may provide greater health protection. The analysis is to be published in the Federal Register. If, after opportunity for public comment, the Administrator concludes that changes to enhance public health protection provided by the existing regulations are not available, an explanation of that conclusion must also be published in the Federal Register.

The Committee expects that the standard-setting and review provisions of this bill will stimulate technological innovation to improve operational capabilities and efficiency, and cost-effectiveness of treatment. The Committee recognizes that research and development activities in this area are not adequate and encourage the water utility industry to undertake such activities for the benefit of local customers and the nation at large.

Science Advisory Board

The Committee anticipates that the Science Advisory Board may be able to provide useful scientific comment, particularly in the area of health effects evaluation, to the Agency during the rulemaking process.

The bill requires the Administrator to provide the Science Advisory Board an opportunity to comment on maximum contaminant level goals and national primary drinking water regulations prior to proposal or during the public comment period. These periods have been designated so that such opportunity shall in no way delay the Agency's rulemaking procedures.

SECTION 3. ENFORCEMENT

SUMMARY

This section amends section 1414 of the Act (1) to streamline the process by which the Administrator enforces against water suppliers that violate the Act; (2) to require the Administrator either to issue an order or institute a judicial action when public water system noncompliance with regulations or requirements is found an a State is not taking appropriate enforcement action; (3) to provide an administrative order authority to the Administrator; (4) to increase the maximum civil penalty from $5,000 to $25,000 per day of violation; and (5) to eliminate the requirement that violations of the Act must be willful in order for civil penalties to be assessed.

DISCUSSION

This section makes several changes in the existing law in order to improve compliance with the Act by public water supply systems.

First, the changes streamline the cumbersome and time consuming process by which EPA can take action against water suppliers in States with primary enforcement responsibility and makes EPA enforcement actions mandatory. The bill provides that if a State has not commenced appropriate enforcement action 30 days after EPA has notified the State and water supplier of a violation, the Administrator is required either to issue a compliance order or institute judicial action.

The bill also requires the Administrator to take enforcement actions whenever violations are found in States that do not have primary enforcement responsibility.

Current law does not require the Administrator to take enforcement action whenever violations are found.

Second, the section establishes a new remedy that may be used against a noncomplying public water supplier: an administrative order which may be issued in any case where the Administrator is authorized to bring a civil action. The Administrative order authority provides for more efficient enforcement against less significant violations and is expected to enable EPA to develop a more aggressive enforcement program. According to EPA, the majority of violations of applicable regulations or requirements under the Safe Drinking Water Act are believed to be relatively minor, normally incurring penalties of $5,000 or less. The purpose of adding administrative order authority is not to replace judicial enforcement, but to add a complementary enforcement mechanism.

Administrative penalties are not assessable in the administrative order itself, but the Administrator may elect to assess a penalty of up to $5,000 in accordance with the Administrative Procedures Act for the violation of such an order. In the alternative, the Administrator may bring a civil action for enforcement of the order or for penalties of up to $25,000 per day of violation of the order, or both.

The third change in existing law deletes the requirement of willfulness as a condition of liability for civil penalties. Such a condition is appropriate for criminal liability, not for imposition of civil penalties.

Finally, this section of the bill increases the maximum civil penalty that a court may impose upon a noncomplying public water supplier, $5,000 per day of violation to $25,000 per day of violation, in recognition of the seriousness of health risks posed by violations of Part B of the Act.

SECTION 4. PUBLIC NOTIFICATION

SUMMARY

This section requires the Administrator to amend existing regulations requiring public notification for violations of public water system requirements to provide for different types and frequencies of notice based on differences between intermittent or infrequent violations and those that are continuous or frequent. The seriousness of any potential health effects associated with such violations shall also be taken into account in promulgating regulations.

Notice of any violation of a maximum contaminant level or any other violation designated as posing a serious potential adverse health effect shall be given as soon as possible but in no case later than 14 days after the violation. Notice of continuous violations shall be given no less frequently than every three months. Notice of violations judged to be less serious shall be given no less frequently than annually. Notification of affected persons is to be as prompt as possible and shall include notification by newspaper and, unless inappropriate, notice by radio, television, and individual mailings.

Notice is to provide an explanation of the violation, potential adverse health effects to sensitive populations as well as the general public, corrective steps, and the necessity, if any, of seeking alternative water supplies.

DISCUSSION

Existing regulations for public notification of violations of the Safe Drinking Water Act have been widely criticized for being overly burdensome to water suppliers, confusing to the public, and poorly enforced by EPA and delegated State authorities.

The bill requires the Administrator to amend these regulations within 18 months of enactment. Revised notification requirements will distinguish between serious and less serious violations based on the presence of an adverse health effect or the frequency of violation. Such revisions are expected to provide the public with more timely and meaningful information in case of a violation and to improve compliance with notification requirements.

SECTION 5. VARIANCES

SUMMARY

Section 5 requires the Administrator to make a finding of what constitutes "best available technology" for the purpose of granting a variance pursuant to Section 1415 of the Act. For these purposes, the Administrator may take into account the number of persons served by the system, physical conditions related to engineering feasibility and costs of compliance with maximum contaminant levels. Additionally, section 5 requires that a State granting a variance must simultaneously prescribe a compliance and implementation schedule. Currently law permits delay of up to one year before the State must set out a schedule.

DISCUSSION

Section 1415 of the Act provides that variances from national drinking water regulations may be granted by the primary enforcement authority for public water systems (either the Administrator or a State). Under this section, variances may be granted to systems if, because of the raw water quality of reasonably available sources, the systems cannot meet the maximum contaminant levels despite application of the best technology, treatment techniques, or other means which the Administrator finds are available (taking costs into consideration).

Under this bill, EPA is required to promulgate a finding of best available technology under the standard setting provisions in section 1412 of the Act. Because there may be instances where the best available technology specified under section 1412 may not be economically or technologically available to smaller systems or to systems with unusual physical conditions, the bill requires the Administrator to promulgate a finding as to what constitutes best available technology for the purposes of the variance provision of the Act. The Administrator, in making such a finding, is to take into account the number of persons served by a system, physical conditions related to engineering feasibility and costs of compliance. While the bill provides flexibility to the Administrator to accommodate extreme differences among water systems, every determination of best available technology should have as its primary consideration, protection of the health of those consuming the water.

SECTION 6. EXEMPTIONS

SUMMARY

Amendments under this Section modify the deadlines that apply to exemptions. Under existing Section 1416 of the Act, the primary enforcement authority (a State or EPA) has the authority to grant exemptions to public water systems from national drinking water standards. The bill now requires that the enforcement authority issuing the exemption establish a compliance and implementation schedule at the time an exemption is granted rather than within the one year grace period, provided in current law. Section 6 further requires that systems operating under exemptions from existing regulations must come into compliance within one year of enactment.

Exemptions may be granted by the States or EPA for not more than three years if the public water systems demonstrate that it cannot meet the applicable drinking water standard within the maximum 3 year period because: (1) the needed capital improvements cannot be completed within that time; (2) the system needs financial assistance and has entered into an agreement to obtain such assistance; (3) the system has entered into an enforceable agreement to become part of a regional public water system, and the system is taking all practicable steps to meet the standard. Systems with less than 500 service connections needing financial assistance may receive additional two-year exemptions if they meet certain criteria.

DISCUSSION

The deadlines and eligibility criteria for exemptions are designed to promote compliance with applicable standards and reserve the use of exemptions to good-faith hardship situations. Few systems are expected to operate under exemptions after the expiration of the one year deadline imposed under Section 6(a).

SECTION 7. MONITORING FOR UNREGULATED CONTAMINANTS

SUMMARY

Section 7 establishes a mandatory monitoring program for unregulated contaminants. Within 18 months of enactment, the Administrator is required to promulgate regulations governing this monitoring program, including a list of contaminants for which public water systems must monitor, and criteria for deleting contaminants from the list. Each system is required to monitor at least once within 5 years of the effective date of such regulations. The Administrator may require more frequent monitoring depending upon factors such as the source of supply, the size of the system, and the likelihood of contamination.

The primary enforcement authority in each State may delete contaminants from the designated list (in accordance with criteria established by the Administrator) for an individual system, subject to EPA approval of a contaminant assessment submitted by such authority. The Administrator is allowed 90 days to make such a determination.

The results of the monitoring shall be provided to the primary enforcement authority and notification of the availability of results shall be given to persons served by the system and the Administrator.

The Administrator is given the authority to waive the monitoring requirement contained in Section 7(b) for a system that has conducted a monitoring program after January 1, 1983 if the Administrator determines the system's program was consistent with regulations promulgated under Section 7.

A system supplying less than 150 service connections will be regarded as complying with Section 7 if such system provides water samples or the opportunity for sampling according to rules established by the Administrator.

This section authorizes $30,000,000 for the monitoring program.

DISCUSSION

One of the difficulties in pursuing a national policy to control or eliminate contaminants in drinking water is the lack of reliable data on what contaminants are present in public water systems. Current law permits the Administrator to require monitoring of only regulated contaminants. Since EPA has promulgated standards for only 22 contaminants, this monitoring requirement applies to a small number of contaminants that may be found in public water systems.

The Administrator should develop the list of unregulated contaminants to be monitored by all systems based on potential health risks and exposure to contaminants. Contaminants may be deleted by the primary enforcement authority from the monitoring list for an individual system upon a showing by such authority that is approved by EPA. It should be noted, however, that monitoring programs conducted at the State level have detected the presence of many unexpected contaminants. In light of this experience, it is anticipated that the primary enforcement authority would carefully weigh any request to delete contaminants from the designated list and that EPA would carefully scrutinize such requests. Deletion of contaminants prior to at least one initial baseline test is expected to be infrequent and allowed only where there is compelling evidence that the contaminant will not be found.

The frequency and schedule of monitoring requirements should vary according to the number of persons served by the system, the source of supply, and the contaminants likely to be found. It is appropriate for systems with supplies that may be subject to contamination from diverse industrial, municipal, and agricultural activities to monitor on a more frequent basis than those systems with more protected water supplies. Regulations should take these differences into account, recognizing the need for sufficient water analyses to detect contamination given the frequent changes that may occur in water quality. In any case, no system shall monitor less than once in five years. In general, only the smallest systems are expected to monitor with this infrequency.

Small systems (those supplying less than 150 service connections) are not burdened by the monitoring requirement as they are permitted to satisfy the monitoring requirements by submitting samples or providing an opportunity for sampling.

SECTION 8. TECHNICAL ASSISTANCE

SUMMARY

The Administrator is authorized to provide technical assistance to small public water systems to enable such systems to achieve and maintain compliance with national drinking water regulations. Such assistance may include "circuit rider" programs, training, and preliminary engineering studies. $10,000,000 per year for each of fiscal years 1987–1990 are authorized to be appropriated to implement this section.

DISCUSSION

Noncompliance with national drinking water regulations has been a chronic problem for small systems. This is due primarily to a lack of financial resources and technical expertise. The noncompliance situation may worsen with the issuance of new regulations required by this bill unless an increased effort is made to provide technical assistance.

The bill provides a $10 million annual authorization for technical assistance to small systems. Such assistance may be in the form of training programs, "circuit-rider" programs, or other activities which will facilitate small system compliance. These funds are to be used by organizations such as the National Rural Water Association which have particular knowledge of problems and needs of rural communities and experience in providing on-site assistance with the construction, operation, and maintenance of small systems. In addition, 5 percent of the funds provided by this section is to be set aside for technical assistance to Indian tribal organizations.

SECTION 9. TAMPERING WITH PUBLIC WATER SYSTEMS

SUMMARY

This section provides for penalties for persons who attempt or threaten to tamper or actually tamper with a public water system. It provides EPA the authority to bring a civil action in United States district court against any such person. The court may impose a civil penalty of not more than $50,000 for tampering or not more than $20,000 for an attempt or threat to tamper. Criminal penalties consist of a fine of not more than $50,000 or imprisonment for not more than 5 years, or both, for tampering and a fine of not more than $20,000 or imprisonment for not more than 3 years, or both, for attempted or threatened tampering.

DISCUSSION

Current law does not provide for Federal intervention in actual or threatened incidences of international contamination of public water systems. The purpose of providing new Federal enforcement authority is to discourage such tampering activities and to expedite the handling of any cases that do occur.

SECTION 10. RESTRICTIONS ON UNDERGROUND INJECTION OF HAZARDOUS WASTE AND REGULATION OF STATE PROGRAMS

SUMMARY

This section limits Federal regulation of State programs that regulate the underground injection of brine which is brought to the surface from natural gas storage operations.

The bill also requires the Administrator to revise underground injection control (UIC) regulations within 18 months of enactment, to require ground water monitoring at Class I injection wells in such a way as to provide the earliest possible detection of fluid migration into or in the direction of underground sources of drinking water. Such monitoring will be required unless the Administrator or delegated State authority concludes it is not necessary because no potential exists for migration from the injection zone.

The bill also requires the Administrator to submit a report to Congress no later than September 1987 which will provide information on the numbers and categories of Class V wells, the primary contamination problems associated with these wells, and recommendations for minimum design, construction, installation, and siting requirements.

The final amendment in this section allows the application of enforcement authorities available under the Solid Waste Disposal Act to enforcement of the Class IV ban enacted under that Act.

DISCUSSION

This section includes an amendment to three provisions of Part C of the Safe Drinking Water Act relating to the regulation of underground injection of brine which is brought to the surface from natural gas storage operations. Current law limits Federal regulation of State UIC programs which might interfere with or impede the underground injection of brine or other fluids which are brought to the surface in connection with oil or natural gas production unless such requirements are essential to assure that underground sources of drinking water will not be endangered by such injection. The amendment applies the same regulatory limitations to the reinjection of brine which is brought to the surface with stored gas. This change is made for purposes of consistency, and it in no way alters or affects prescribed duties to assure that underground sources of drinking water will not be endangered by an underground injection.

This section of the bill will enhance the protection of underground sources of drinking water from underground injection of hazardous and nonhazardous waste regulated under the Safe Drinking Water Act.

EPA estimates that Class I wells (injection below an underground source of drinking water) is the method for disposal of about 57 percent of the hazardous waste disposed of annually in the U.S. Current EPA regulations require pressure monitoring within the injection well annulus in order to provide an early warning of any leak that might develop in the well casing. Internal pressure monitors will not provide an indication of a leak into an overlying underground source of drinking water formation from certain other mechanical failures or hydrogeologic disturbances. The Committee heard testimony from UIC State program representatives and industry witnesses indicating the need for ground water monitoring in some cases and the need for flexibility in making such site-by-site determinations.

This section requires EPA to amend current UIC regulations to require ground water monitoring that will provide the earliest possible detection of migration into or in the direction of an underground source of drinking water, unless the EPA or the delegated State authority concludes on the basis of the applicant's demonstration, that monitoring is not necessary because no potential exists for migration from the injection zone that may be harmful to human health and the environment.

This provision is not intended to modify or eliminate current requirements for annulus and other types of monitoring which provide a fundamental check on the mechanical integrity of the well under existing EPA and State regulations.

This section also requires that EPA submit a report on Class V wells. The Class V category includes among other practices, diverse types of non-hazardous disposal including industrial and agricultural drainage, and air conditioning return flows. EPA has not issued specific regulations for design, construction, installation, or siting requirements for Class V wells as necessary to protect underground sources of drinking water. This report, which will be based on state surveys of Class V wells now in progress, will be useful in determining the need for minimum Class V requirements. The report to the Committee is to consist of a categorization of different types of Class V wells, an identification of problems associated with such wells, and recommendations for minimum requirements.

The bill also renumbers and inserts section 7010 of the Solid Waste Disposal Act into subtitle C of that Act and clarifies that the statutory and regulatory ban on Class IV wells is enforceable not only pursuant to the Safe Drinking Water Act, but also pursuant to all of the enforcement provisions of the Solid Waste Disposal Act, as amended. These amendments are intended to clarify that the ban may be enforced, not only pursuant to sections 7002 and 7003 of the Solid Waste Disposal Act, but also pursuant to sections 3004(v), 3008, and 3013 of the Solid Waste Disposal Act. Similarly, operators of Class I hazardous waste injection wells who violate the UIC regulation or their permits may be subject to enforcement pursuant to the Solid Waste Disposal Act (including section 3004(v), 3008, 3013, 7002 and 7003), again because the UIC regulations for hazardous waste injection were promulgated, in part, pursuant to the Solid Waste Disposal Act.

Solid Waste Disposal Act enforcement authorities such as section 3008 are already available to enforce against violators of the Class IV well ban, because the EPA rules banning these wells were promulgated pursuant to the Solid Waste Disposal Act, as well as the Safe Drinking Water Act, and therefore are requirements of subtitle C of the Solid Waste Disposal Act which are enforceable under section 3008. This amendment will clarify beyond any doubt that section 7010(c) as previously enacted in 1984, was not intended to remove the authority to enforce against violators of the Class IV ban under other provisions such as section 3008 of the Solid Waste Disposal Act.

SECTION 11. ENFORCEMENT

SUMMARY

This section amends section 1423 of the Act, which deals with enforcement of underground injection control program requirements. The changes include (1) streamlining EPA enforcement procedures in States that have primary enforcement responsibility; (2) requiring the Administrator to take enforcement action whenever a violation is found and a State has not commenced appropriate action; (3) raising maximum civil and criminal monetary penalties from $5,000 and $10,000 to $25,000 and $50,000, respectively, per day of violation, and adding authority to seek prison terms for criminal violations; (4) providing for imposition of penalties beginning on the first day that notice of a violation is given to a violator, rather than waiting 60 days after notice is provided, as in existing law; and (5) providing for administrative orders to require compliance with, or to assess civil penalties of up to $125,000 for violations of, the underground injection control program requirements, or both.

DISCUSSION

Like section 3 of the bill, this section amends the Act to bring about improved enforcement of the Act's requirements.

Changes made by this section with respect to EPA enforcement procedures in States with primary enforcement responsibility for underground injection control programs are consistent with the changes made in connection with the public water supply part of the Act and discussed in the report in connection with section 3 of the bill.

Section 11 increases the maximum civil penalties from $5,000 to $25,000 per day of violation and permits assessment of penalties to begin as soon as notice is given. These changes are made in recognition of the severity of environmental and health risks posed to underground sources of drinking water by noncomplying operators of injection wells. The bill also provides for penalties of up to $50,000 per day and for imprisonment for willful violations of requirements of underground injection control programs in order to clarify the criminal nature of these violations and to provide a strong deterrent against the most serious violations.

Finally, the section creates a new civil enforcement option for the Administrator: authority to issue administrative orders to require compliance with applicable regulations or requirements, or assess an administrative penalty, or both.

The penalty authority provisions vary slightly between those applicable to operators of oil and gas wells and those applicable to other operators of underground injection programs. The maximum administrative penalty in both cases is $125,000, while the maximum daily penalty for each violation is $5,000 for oil and gas operators and $25,000 for others.

The authority to issue administrative orders is intended to complement and not to replace the civil judicial enforcement program. The addition of administrative order authority should, therefore, increase the total number of enforcement actions without any corresponding decline in the modest number of judicial enforcement actions being taken by the Administrator at present. The Administrator is not expected to use this new authority for cases that would otherwise have been tried in court. Civil judicial enforcement will always be necessary for cases involving novel issues of law and for serious violation of the Act.

To serve its intended function, the administrative order authority should be tailored to the less complex cases for which it is intended. Administrative enforcement should be as flexible and unencumbered by procedural complexities as possible, and consistent with due process considerations while providing for effective input by citizens who may be affected by the violations.

The procedures adopted in the reported bill strike the appropriate balance between streamlined procedures and basic fairness. Prior to issuing an administrative order, the Administrator must give the person to whom it is directed written notice of the proposed order and, within 30 days of receipt of such notice, a hearing. Such a hearing includes the right to a reasonable opportunity to be heard and to present evidence. Because administrative orders will be used in smaller cases, formal administrative procedures strictly in accordance with the formal adjudicatory procedures of the Administrative Procedures Act are not required. EPA therefore has the flexibility to streamline its decision-making process and procedural rules through promulgation of procedural regulations that provide appropriate due process protection.

There are several safeguards in this provision to prevent abuse of the administrative order authority, such as unduly long compliance schedules or significant violators' escaping with nominal penalties. The Administrator is required to provide the public with notice of the proposed order and a reasonable opportunity to comment on the proposal. Public notice of such proceedings must be given in a manner that will apprise interested citizens of the proceeding. If a hearing on the proposed assessment is conducted, any citizen who commented on the proposal shall be given notice of such a hearing and a reasonable opportunity to be heard and to present evidence at the hearing. If no hearing is held, the Administrator must set aside the penalty order and provide a hearing when presented with evidence that the order was inadequate or improper. The Administrator is to construe this provision liberally so as not to place a heavy burden on citizens seeking a hearing.

An order becomes final and nonappealable 30 days after its issuance or, in the case of a post-issuance request for a hearing, 30 days following the final action by the Administrator. While the Committee bill allows for judicial review without the necessity of holding a hearing in every case, it is expected that some parties will request hearings.

The amendment strikes a balance between two competing concerns: The need to avoid placing obstacles in the path of citizen suits and the desire to avoid subjecting violators of the law to dual enforcement actions or penalties for the same violation. It states that no one may bring an action under sections 1423(b), 1424(c), or 1449 of this Act for any violation with respect to which the Administrator has commenced and is diligently prosecuting an administrative order action, or for which the Administrator has issued a final order not subject to further judicial review (and for which the violator has paid the penalty). This limitation would not apply to an action under section 1449(a)(1) of this Act filed prior to commencement of an administrative order proceeding for the same violation, or a violation which has been the subject of a notice of violation under section 1449(b)(1) of this Act prior to initiation of the administrative order process, provided that, in the latter case, an action under section 1449(a)(1) of this Act is filed within 120 days of the notice of violation.

Judicial review of a penalty assessment is available to any person against whom a civil penalty order is issued as well as to any citizen who commented on a proposed assessment. Judicial review is not to be de novo review, but will be based upon whether the Agency's finding of a violation is supported by substantial evidence in the administrative record and whether the assessment of the penalty is an abuse of discretion.

The penalty collection proceeding will not be an opportunity to contest the penalty assessment. The discretion to compromise, mitigate or abandon such claims continues to reside with the Attorney General.

SECTION 12. SOLE SOURCE AQUIFER DEMONSTRATION PROGRAM

SUMMARY

The bill establishes administrative procedures for the development, implementation, and assessment of demonstration programs designed to protect ground water resources within designated sole source aquifer areas.

The Administrator is required within 16 months of enactment to establish criteria for indentifying "critical aquifer protection areas" within sole source aquifer areas designated under Section 1424(e) of the Safe Drinking Water Act.

Any State, municipal, or local government or political subdivision thereof or any planning entity that identifies a "critical aquifer protection area" over which it has authority or jurisdiction may apply to the Administrator for the selection of such area for a demonstration program.

An application submitted to the Administrator by any applicant shall designate boundaries for the "critical aquifer protection area" and shall include a plan proposal or a comprehensive management plan for the proposed area. The objectives of such plan shall be to maintain the quality of the ground water in the "critical aquifer protection area" in a manner reasonably expected to protect human health, the environment, and ground water resources. The following elements shall be included in such a plan: (1) a map showing the detailed boundary of the critical protection area; (2) a hydrogeologic assessment of surface and ground water resources within the critical protection area; (3) an identification of existing and potential point and nonpoint sources of ground water degradation; (4) an assessment of the relationship between activities on the land surface and ground water quality; (5) specific actions and management practices to be implemented in the critical protection area to prevent adverse impacts on ground water quality; and (6) an identification of authority adequate to implement the plan, estimates of program costs, and sources of State matching funds.

The Administrator must approve or disapprove the application within 120 days of receipt. Upon approval of an application, the Administrator may enter into a cooperative agreement with the applicant to establish a demonstration program, and may provide, on a matching basis, a grant of 50 per cent of the costs of developing and implementing the plan.

An annual authorization of $20,000,000 is provided for grants for fiscal years 1987–1990. The total amount of grants for any one designated aquifer in a fiscal year shall not exceed $4,000,000.

Each State participating in the program is required to submit a report to the Administrator no later than December 31, 1989, assessing the impact of the program on ground water quality in critical protection areas within their boundaries. No later than September 30, 1990, the Administrator is required to submit a report to Congress summarizing State reports and assessing the accomplishments of the sole source aquifer demonstration program.

DISCUSSION

There is an urgent need for protection of the nation's ground water resources to provide present and future supplies of safe drinking water. This section authorizes the establishment of ground water protection programs in a limited number of areas, where the need is particularly critical, for the purpose of preventing contamination of essential drinking water supplies and demonstrating the effectiveness of specific protection measures.

Under this section, demonstration programs may only be established in critical aquifer protection areas, within an area for which an application for designation as a sole or principal source aquifer under section 1424(e) of the Safe Drinking Water Act has been submitted to the Administrator as of the date of enactment of these amendments. Thirty-three applications for sole source aquifer designation have been submitted to the Administrator to date and 21 have been approved. Sole source aquifer areas are defined by EPA as areas within which the drinking water supply for at least 50% of the population comes from an aquifer.

The Administrator is required to establish criteria for identifying critical aquifer areas within sole source aquifer areas. Factors to be considered in defining such criteria are the vulnerability of the aquifer to contamination due to hydrogeologic characteristics, (including the volume of recharge to the aquifer through a protection area and soil permeability), the number of persons or the proportion of population using the ground water as a drinking water source, the economic, social and environmental benefits that would result to the area from the maintenance of high quality ground water, and the economic, social and environmental costs that would result from degradation of the quality of the ground water.

Any State, municipal, or local government or political subdivision thereof or any planning entity (including any interstate regional planning entity) that identifies a critical aquifer protection area over which it has authority or jurisdiction may apply to the Administrator for the selection of such area for a demonstration program.

In order to encourage cooperation and coordination between entities involved in plan development and implementation, any applicant must consult with other government or planning entities with authority or jurisdiction in the area prior to application. All applications which include plans are to include a certification by the Governor that the plan is consistent with State laws, regulations, and policies. If the Governor determines that there are inconsistencies, the Governor is to provide an applicant a written explanation of such inconsistencies. In cases where Federal funds have previously been expended under section 208 of the Clean Water Act for a plan to protect a designated sole source aquifer, applicants, other than the Governors are to submit a joint application with the Governor and obtain the Governor's approval of the plan prior to implementation.

Any application submitted to the Administrator by any applicant is to propose boundaries for the critical aquifer protection area within their jurisdiction and include a plan proposal or a comprehensive management plan for the proposed area. The proposed protection area need not be one contiguous area but could consist of several separate areas within a sole source aquifer area.

Submitted plans should include the following elements: (1) a map showing the detailed boundary of the critical protection area; (2) a hydrogeologic assessment of surface and ground water resources within the critical protection area; (3) an identification of existing and potential point and nonpoint sources of ground water degradation; (4) an assessment of the relationship between activities on the land surface and ground water quality; and (5) an identification of authority adequate to implement the plan, estimates of program costs, and sources of State matching funds.

A Section 208 plan, approved before the date of enactment, for the protection of designated sole source aquifer shall be considered a comprehensive management plan suitable for application under this section.

The objective of activities proposed in any plan should be to maintain the quality of the ground water in the critical aquifer protection area in a manner reasonably expected to protect human health, the environment, and the ground water resources.

Proposed activities should address both existing and potential impacts on ground water quality. Plans may emphasize such preventive actions and practices as maintenance of natural vegetative and hydrogeologic conditions through zoning, transfer of development rights or other land use management measures. Consideration may also be given to the establishment of a State institution to facilitate and assist in funding a development transfer credit system.

The Administrator must approve or disapprove any application within 120 days of its submission. Approval is to be based on a determination that the proposed critical aquifer protection area satisfies EPA's established criteria and that a demonstration program for the area would provide ground water quality protection in a manner reasonably expected to protect human health, the environment, and the ground water resources. Upon approval of an application, the Administrator may enter into a cooperative agreement with the applicant to establish a demonstration program.

Upon entering into a cooperative agreement, the Administrator may provide to the applicant on a matching basis, a grant of 50 per cent of the costs of developing and implementing the plan for protection of the critical aquifer protection area.

The amount of $20 million per year during fiscal years 1987-1990 is authorized for these programs. The total amount of grants for any one designated sole source aquifer may not exceed $4 million in any fiscal year.

There are a number of restrictions on the use of funds under this section. No funds may be expended to clean up any source of contamination or to bring any source of contamination into compliance with Federal, State, or local statutes. Construction of any structure designed for such purpose, including sewer collectors, are not eligible for funding. In addition, no costs for plans developed prior to the date of enactment, including water quality management plans developed under 208, may be reimbursed. Finally, funds may not be used for activities funded under other sections of the Safe Drinking Water Act or other Federal environmental statutes.

Because one of the purposes of the demonstration program is to assess its impact on ground water quality, States and the EPA are both subject to reporting requirements under this section. No later than December 1989, each State is required to submit a report assessing the impact of the program on ground water quality and identifying those meaasures found to be effective in protecting ground water resources. The Administrator is required to submit a report to Congress by September 1990 summarizing the State reports and assessing the accomplishments of the program, including an identification of protection methods found to be most effective and recommendations for their application to protect ground water resources from contamination wherever necessary.

Section 13. Authorization of Appropriations

SUMMARY

This section of the bill authorizes appropriations to be expended to fulfill existing responsibilities and new activities authorized in this bill for fiscal years 1986 through 1990. The following amounts are authorized for specific activities under the Safe Drinking Water Act.

Each fiscal year 1986 through 1990

Sec. 1442(a)(2) (B)—Technical assistance and grants to respond to emergency situations	$11,300,000
Sec. 1442(f)—General authorization for Sec. 1442—Research Technical Assistance, Information, and Training	47,000,000
Sec. 1443(a)(7) State Program Grants	45,000,000
Sec. 1443(b)(5) State UIC Grants	28,000,000
Total	131,300,000

DISCUSSION

The authorized levels of funding reflect additional resource needs for the following activities:

1. scheduled development of national primary drinking water regulations;
2. enhanced enforcement of public water system and underground injection control programs including issuance of administrative orders;
3. issuance of variances and exemptions;
4. development of a monitoring program for unregulated contaminants;
5. rulemaking for public notification;

6. development of UIC monitoring regulations;
7. increased technical assistance;
8. study of unregulated Class V wells;
9. establishment of the sole source aquifer demonstration program.

Not included in the 5 year annual authorization in this section are $10,000,000 per year for technical assistance to small systems authorized in Section 8 of the bill, a $30,000,000 authorization for small system monitoring authorized in Section 7, and an annual authorization of $20,000,000 for four years (FY 1987–1990) for the sole source aquifer demonstration program.

SECTION 14. INDIAN TRIBAL ORGANIZATIONS

SUMMARY

Section 14 adds a comprehensive definition of "Indian tribal organization", and requires the Administrator to conduct a survey of drinking water problems on Indian reservations. Section 14(c) permits the Administrator to make special provision for the treatment of Indian tribes under the Act, including, if appropriate, the treatment of Indian tribes as States for the purposes of the Act and a reduction of the non-Federal share pursuant to section 1443 of the Act (grants for State programs).

DISCUSSION

This section provides that EPA may make special provisions for the treatment of Indian tribal organizations (as defined in this section), including treating tribal organizations as States for the purposes of the appropriate part of the Act.

EPA may approve primary enforcement responsibility (for public water systems or for UIC) for such tribal organizations, where the Administrator finds such approval is appropriate. The standards for delegation of primary enforcement responsibility that apply to States shall also apply to Indian tribal organizations. Municipalities in primacy States that are located on reservations where the Indian tribal organization has also been granted primacy may choose whether to be subject to the State or Indian tribal organization enforcement authority.

The Administrator is also required to conduct a survey of drinking water on reservations to assess the quality of such drinking water and the need for alternative drinking water supplies. There is concern that there may be a disproportionate incidence of waterborne diseases on reservations.

Funding adjustments may also be possible under this section at the discretion of the Administrator. The Administrator is given the authority to reduce the minimum 25 percent non-Federal share of grants approved pursuant to section 1443 of the Act for public water system supervision or ground water protection programs. In addition, section 8 of the bill sets aside at least 5 percent of funds authorized to be appropriated for technical assistance.

SECTION 15. JUDICIAL REVIEW

SUMMARY

This section revises the provisions of section 1448(a) governing judicial review of Agency actions under the Safe Drinking Water Act.

New section 1448(a)(1) provides that an application for review of regulations may be filed in the U.S. Circuit Court for the District of Columbia or in the U.S. Court of Appeals for a circuit in which the applicant resides or transacts business which is directly affected by such regulation within one hundred and twenty days after such regulation is promulgated. Under current law, judicial review is largely limited to the U.S. Circuit Court of Appeals for the District of Columbia and applications for review must be filed within forty-five days.

New section 1448(a)(2) establishes a random selection procedure, to be administered by the Administrative Office of the United States Courts, to determine in an orderly fashion the court of appeals in which a regulation is to be reviewed when applications for review have been filed in two more courts of appeal.

Following the selection of a single court of appeals, other courts in which applications have been filed are directed to promptly transfer such applications to the court in which the Agency record has been filed. Notwithstanding the outcome of the random selection procedure, any court in which an application for review has been filed would retain the power to transfer the case to any other court of appeals for the convenience of the parties or otherwise in the interest of justice.

Conforming changes are made in section 1448(b).

DISCUSSION

The principal purpose of this amendment is to allow the filing of applications for review of Safe Drinking Water Act Agency actions in U.S. Courts of Appeals other than the U.S. Court of Appeals for the District of Columbia.

The justification for centralized judicial review of environmental regulations is that it eliminates the possibility of conflicting interpretations of the law in different circuits and allows a single court to develop expertise in this complex area of the law. However, in the judgment of the Committee these advantages, to the extent they exist, are insufficient to offset the disadvantages of centralized judicial review, which include inconvenience to litigants who do not reside in Washington, D.C. and an unwarranted concentration of power in a single tribunal, which may in turn generate undesirable political pressures on the appointment of judges. Centralizing review in a single court may also deprive the law of diverse views on complex legal issues, and as a result may make the task of the Supreme Court more difficult. Although other Circuit Courts of Appeal may not at present possess as much technical expertise as the D.C. Circuit, the responsibility of a Court of Appeals is to review regulations for conformity with law, not to undertake technical review of regulations.

The random selection process created by section 1448(a)(2) is intended to avoid the "race to the courthouse" phenomenon and provide for an orderly means of consolidating applications for review of the same Agency action. This process does not preclude any court of appeals from exercising its inherent power of transferring an application for review to any other court of appeals for the convenience of the parties or otherwise in the interest of justice.

The amendment also changes the period within which an application for review of any Agency action must be filed from forty-five to one hundred and twenty days. In view of the seriousness of the possible consequences of a failure to challenge an action of the Administrator within the prescribed time period, persons who will be directly affected by a regulation should have ample opportunity to assess the consequences of such regulation and file an application for review. A period of one hundred and twenty days provides such an opportunity.

EVALUATION OF REGULATORY IMPACT

In compliance with section 11(b) of the Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact of the reported bill.

Section 2 of the bill requires the Administrator to exercise standard-setting authority already available to the Agency. Public water systems are already subject to regulation under this section and no new parties will be made subject to regulation by enactment of this section in the bill. Additional control requirements will result as additional contaminants are listed and regulated by the Administrator. It is not possible to estimate aggregate or individual costs of this provision because information is lacking upon which to estimate either the level of controls that will be needed to protect health or the water supply systems that will be found to need additional controls.

Section 2 also requires the Administrator to promulgate regulations requiring disinfection as a treatment technique for all public water systems. Under this section, some systems may not be required to disinfect because of their raw water quality. EPA estimates over 27,000 of the 60,000 systems in the nation do not currently disinfect. The cost of installing disinfection may range from $0.003 to $0.15 per 1000 gallons. Since regulations are not yet available, it is impossible to make a reliable impact estimate at this time.

Additionally, this section requires the Administrator to promulgate regulations specifying criteria under which filtration is required as a treatment technique for public water systems supplied by surface water sources. States are then to determine whether filtration is required. Almost 5,000 public water systems do not now utilize filtration. The cost of installing both filtration and disinfection ranges from $0.22 to $5.65 per 1,000 gallons. Until applicable regulations have been promulgated, more precise estimates are not available.

The paucity of information that makes estimates of the costs of section 2 standard setting provisions impossible will be remedied, in part, by the requirements of section 8 of the bill that all public water systems monitor for unregulated pollutants designated by the Administrator. This requirement will apply to a total of $60,000 public water systems. Monitoring costs may range from $500 to $1,000 per analysis. Authorizations of $30 million are made available to pay for monitoring by the 30,000 smallest public water systems.

Section 10 of the bill requires that additional monitoring requirements be promulgated for certain types of underground injection well operators already subject to regulation. The estimated cost of new requirements may be $10,000 to $60,000 per site. The number of operators subject to the requirement is 198.

HEARINGS

The Subcommittee on Toxic Substances and Environmental Oversight held 1 day of hearings on S. 124. The hearing was held in Washington, D.C. on March 21, 1985.

ROLLCALL VOTES

Section 7(b) of rule XXVI of the Standing Rules of the Senate and the rules of the Committee on Environment and Public Works require that any rollcall votes be noted in this report. There were no rollcall votes taken during committee consideration of this measure.

COST OF LEGISLATION

Section 403 of the Congressional Budget and Impoundment Control Act requires that a statement of the cost of the reported bill, prepared by the Congressional Budget Office, be included in the report. A copy of that statement follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 13, 1985.

Hon. ROBERT T. STAFFORD,
Chairman, Committee on Environment and Public Works, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for S. 124, the Safe Drinking Water Act Amendments of 1985.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

JAMES BLUM,
(For Rudolph G. Penner, Director).

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 124.
2. Bill title: Safe Drinking Water Act Amendments of 1985.
3. Bill status: As ordered reported by the Senate Committee on Environment and Public Works, May 2, 1985.
4. Bill purpose: S. 124 would authorize appropriations to the Environmental Protection Agency (EPA) for safe drinking water programs for fiscal years 1986 through 1990, including grants to states

for emergency actions, underground injection control, and public system supervision. The bill would authorize appropriations of $10 million for each of the fiscal years 1986 through 1989 for technical assistance to small public water systems. S. 124 would also authorize the appropriation of $30 million in fiscal year 1986 to be used by the EPA to develop regulations requiring public water systems to monitor for unregulated contaminants. The $30 million could also be used to offset EPA's costs of performing analysis on samples submitted by smaller systems. Finally, S. 124 would provide a total of $80 million over four years to establish a demonstration program for sole source aquifer protection.

5. Estimated cost to the Federal Government:

[By fiscal years, in millions of dollars]

	1986	1987	1988	1989	1990
Authorization level	171.3	161.3	161.3	161.3	151.3
Estimated outlays	115.1	147.6	157.3	159.8	153.8

The costs of this bill fall within budget function 300.

Basis of estimate: Authorization levels are those stated in the bill. For purposes of this estimate, the entire amounts authorized by the bill are assumed to be appropriated for each fiscal year. It is further assumed that all grant funds authorized and appropriated will be disbursed by the EPA and that states will meet the necessary matching requirements. Outlays are estimated on the basis of historical spending patterns for drinking water programs.

6. Estimated cost to State and local governments: CBO has not completed its estimate of the costs to state and local governments.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Deb Reis.

10. Estimate approved by: C.G. Nuckols (for James L. Blum, Assistant Director for Budget Analysis).

CHANGES IN EXISTING LAW

In compliance with section 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows: Existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman:

THE SAFE DRINKING WATER ACT

SHORT TITLE

[SECTION 1. This act may be cited as the "Safe Drinking Water Act".]

SECTION 1. This Act may be cited as the "Safe Drinking Water Act Amendments of 1985."

TITLE XIV—SAFETY OF PUBLIC WATER SYSTEMS

PART A—DEFINITIONS

DEFINITIONS

SEC. 1401. * * *

*   *   *   *   *   *   *

(14) the term "Indian tribal organization" means any Indian tribe, band, nation, or other organized group or community (including any Alaska Native village, but not including any Alaska Native regional or village corporation) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

*   *   *   *   *   *   *

NATIONAL DRINKING WATER REGULATIONS

SEC. 1412. [(a)(1) The Administrator shall publish proposed national interim primary drinking water regulations within 90 days after the date of enactment of this title. Within 180 days after such date of enactment, he shall promulgate such regulations with such modifications as he deems appropriate. Regulations under this paragraph may be amended from time to time.

[(2) National interim primary drinking water regulations promulgated under paragraph (1) shall protect health to the extent feasible, using technology, treatment techniques, and other means, which the Administrator determines are generally available (taking costs into consideration) on the date of enactment of this title.

[(3) The interim primary regulations first promulgated under paragraph (1) shall take effect eighteen months after the date of their promulgation.]

(a) Effective on the date of enactment of the Safe Drinking Water Act Amendments of 1985, each national interim primary drinking water regulation promulgated under this section before such date of enactment shall be deemed to be a national primary water regulation under subsection (b). No such regulation shall be required to comply with the standards set forth in subsection (b)(2) unless such regulation is amended to establish a different maximum contaminant level after the date of enactment of such amendments.

[(b)(1)(A) Within 10 days of the date of the report on the study conducted pursuant to subsection (e) is submitted to Congress, the Administrator shall publish in the Federal Register, and provide opportunity for comment on, the—

[(i) proposals in the report for recommended maximum contaminant levels for national primary drinking water regulations, and

[(ii) list in the report of contaminants the levels of which in drinking water cannot be determined but which may have an adverse effect on the health of persons.

[(B) Within 90 days after the date the Administrator makes the publication required by subparagraph (A), he shall by rule establish recommended maximum contaminant levels for each contaminant which, in his judgment based on the report on the study conducted pursuant to subsection (e), may have any adverse effect on the health of persons. Each such recommended maximum contaminant level shall be set at a level at which, in the Administrator's judgment based on such report, no known or anticipated adverse effects on the health of persons occur and which allows an adequate margin of safety. In addition, he shall, on the basis of the report on the study conducted pursuant to subsection (e), list in the rules under this subparagraph any contaminant the level of which cannot be accurately enough measured in drinking water to establish a recommended maximum contaminant level and which may have any adverse effect on the health of persons. Based on information available to him, the Administrator may by rule change recommended levels established under this subparagraph or change such list.

[(2) On the date the Administrator establishes pursuant to paragraph (1)(B) recommended maximum contaminant levels he shall publish in the Federal Register proposed revised national primary drinking water regulations (meeting the requirements of paragraph (3)). Within 180 days after the date of such proposed regulations, he shall promulgate such revised drinking water regulations with such modifications as he deems appropriate.

[(3) Revised national primary drinking water regulations promulgated under paragraph (2) of this subsection shall be primary drinking water regulations which specify a maximum contaminant level or require the use of treatment techniques for each contaminant for which a recommended maximum contaminant level is established or which is listed in a rule under paragraph (1)(B). The maximum contaminant level specified in a revised national primary drinking water regulation for a contaminant shall be as close to the recommended maximum contaminant level established under paragraph (1)(B) for such contaminant as is feasible. A required treatment technique for a contaminant for which a recommended maximum contaminant level has been established under paragraph (1)(B) shall reduce such contaminant to a level which is as close to the recommended maximum contaminant level for such contaminant as is feasible. A required treatment technique for a contaminant which is listed under paragraph (1)(B) shall require treatment necessary in the Administrator's judgment to prevent known or anticipated adverse effects on the health of persons to the extent feasible. For purposes of this paragraph, the term "feasible" means feasible with the use of the best technology, treatment techniques, and other means, which the Administrator finds are generally available (taking cost into consideration).]

(b)(1) In the case of those contaminants listed in the Advance Notice of Proposed Rulemaking published in volume 47, Federal Register, page 9352, and in volume 48, Federal Register, page 45502, the Administrator shall simultaneously publish maximum contaminant level goals and promulgate national primary drinking water regulations—

(A) not later than 12 months after the date of enactment of the Safe Drinking Water Act Amendments of 1985 for not less than 9 of those listed contaminants;

(B) not later than 24 months after the date of enactment for not less than 40 of those listed contaminants; and

(C) not later than 36 months after the date of enactment for the remainder of such listed contaminants.

(2)(A) Not later than January 1, 1988, and at three year intervals thereafter, the Administrator shall publish a list of contaminants which, in the judgment of the Administrator, may have an adverse effect on the health of persons, and are known or anticipated to occur in public water systems.

(B) For the purpose of establishing such list, the Administrator shall form an advisory working group including members from the National Toxicology Program and the Environmental Protection Agency's Offices of Drinking Water, Pesticides, Toxic Substances, Ground Water, Solid Waste and Emergency Response and any others the Administrator deems appropriate. The Administrator's consideration of priorities shall include, but not be limited to, substances referred to in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act, and substances registered as pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act.

(C) Not later than 24 months after listing, the Administrator shall simultaneously propose a maximum contaminant level goal and a national primary drinking water regulation for not less than 25 contaminants from the priority list established under paragraph (2).

(D) Not later than 36 months after listing, the Administrator shall simultaneously publish a maximum contaminant goal and promulgate a national primary drinking water regulation for those contaminants identified under subparagraph (C).

(3) Each maximum contaminant level goal established under this subsection shall be set at the level at which no known or anticipated adverse effects on the health of persons occur and which allows an adequate margin of safety. Each national primary drinking water regulation for a contaminant for which a maximum contaminant level goal is established under this subsection shall specify a maximum level for such contaminant which is as close to the maximum contaminant level as is feasible.

(4) For the purpose of this subsection, the term "feasible" means feasible with the use of the best technology, treatment techniques and other means which the Administrator finds, after examination for efficacy under field conditions and not solely under laboratory conditions, are available (taking cost into consideration). For the purpose of paragraph (2), the use of granular activated carbon is available (taking costs into consideration) for the control of synthetic organic chemicals, and any technology, treatment technique, or other means found to be the best available for the control of synthetic organic chemicals must be at least as effective in controlling synthetic organic chemicals as the use of granular activated carbon.

(5) Each national primary drinking water regulation which establishes a maximum contaminant level shall list the technology, treatment techniques, and other means which the Administrator finds to be feasible for purposes of meeting such maximum contaminant level, but a primary drinking water regulation under this paragraph shall not require that a specified technology, treatment tech-

nique, or other means be used for purposes of meeting such maximum contaminant level.

(6)(A) The Administrator is authorized to promulgate a national primary drinking water regulation that requires the use of a treatment technique in lieu of establishing a maximum contaminant level, if the Administrator makes a finding that it is not economically or technologically feasible to ascertain the level of the contaminant. In such case, the Administrator shall identify those treatment techniques which, in the Administrator's judgment, would prevent known or anticipated adverse effects on the health of persons to the extent feasible. Such regulations shall specify each treatment technique known to the Administrator which meets the requirements of this paragraph, but the Administrator may grant a variance from any such specified treatment technique in accordance with section 1415(a)(3).

(B) If any contaminant referred to in paragraphs (b)(1) (A) or (B) is listed under this paragraph (and a national primary drinking water regulation requiring the use of treatment techniques is simultaneously promulgated under this paragraph for such contaminant), the listing and promulgation under this paragraph shall be made on the date referred to in paragraphs (b)(1) (A) or (B) for the establishment of primary drinking water regulations.

(C)(i) Not later than 18 months after the enactment of the Safe Drinking Water Act Amendments of 1985, the Administrator shall propose and promulgate national primary drinking water regulations specifying criteria under which filtration (including coagulation and sedimentation, as appropriate) is required as a treatment technique for public water systems supplied by surface water sources. In promulgating such rules, the Administrator shall consider the quality of source waters, protection afforded by watershed management, treatment practices (such as disinfection and length of water storage) and other factors relevant to protection of health.

(ii) In lieu of the provisions of section 1415 the Administrator shall specify procedures by which the State determines which public water systems within its jurisdiction shall adopt filtration under the criteria of clause (i). The State may require the public water system to provide studies or other information, to assist in this determination. The procedures shall provide notice and opportunity for public hearing on this determination. If the State determines that filtration is required, the State shall prescribe a schedule for compliance by the public water system with the filtration requirement. A schedule shall require compliance within 18 months of a determination made under clause (iii).

(iii) Within 18 months from the time that the Administrator establishes the criteria and procedures in this subparagraph, a State with primary enforcement responsibility shall adopt any necessary regulations to implement this subparagraph. Within 12 months of adoption of such regulations the State shall make determinations regarding filtration for all the public water systems within its jurisdiction supplied by surface waters.

(iv) If a State does not have primary enforcement responsibility for public water systems, the Administrator shall have the same authority to make the determination in clause (ii) in such State as the State would have under that clause.

(v) Any filtration requirement or schedule under this subparagraph shall be treated as if it were a requirement of a national primary drinking water regulation.

(D) Not later than 36 months after the enactment of the Safe Drinking Water Act Amendments of 1985, the Administrator shall propose and promulgate regulations requiring disinfection as a treatment technique for all public water systems. And the Administrator shall simultaneously promulgate a rule specifying criteria that will be used by the Administrator or delegated State authorities to grant variances from this requirement according to the provisions of sections 1415(a)(1)(B) and 1415(a)(3). The Administrator or the delegated State authority shall, to the extent feasible, provide technical assistance to small public water systems in complying with this subparagraph.

[(4)**]** *(7)* **[**Revised national**]** *National* primary drinking water regulations shall be amended whenever changes in technology, treatment techniques, and other means permit greater protection of the health of persons, but in any event such regulations shall be reviewed at least once every 3 years. *Such review shall include an analysis of innovations or changes in technology, treatment techniques or other activities that have occurred over the previous three-year period and that may provide for greater protection of the health of persons and the findings of such review shall be published in the Federal Register. If, after opportunity for public comment, the Administrator concludes that changes in technology, treatment techniques or other means are not available to permit greater protection of the health of persons than that afforded by the existing regulations, an explanation of such conclusion, shall be published in the Federal Register.*

[(5)**]** *(8)* **[**Revised national**]** *National* primary drinking water regulations promulgated under this subsection (and amendments thereto) shall take effect eighteen months after the date of their promulgation. Regulations under subsection (a) shall be superseded by regulations under this subsection to the extent provided by the regulations under this subsection.

[(6)**]** *(9)* No national primary drinking water regulation may require the addition of any substance for preventive health care purposes unrelated to contamination of drinking water.

* * * * * * *

[(e)(1) The Administrator shall enter into appropriate arrangements with the National Academy of Sciences (or with another independent scientific organization if appropriate arrangements cannot be made with such Academy) to conduct a study to determine (A) the maximum contaminant levels which should be recommended under subsection (b)(2) in order to protect the health of persons from any known or anticipated adverse effects, and (B) the existence of any contaminants the levels of which in drinking water cannot be determined but which may have an adverse effect on the health of persons.

[(2) The result of the study shall be reported to Congress no later than 2 years after the date of enactment of this title, and revisions thereof reflecting new information which has become available since the most recent previous report shall be reported to the

Congress each two years thereafter. The report shall contain (A) a summary and evaluation of relevant publications and unpublished studies; (B) a statement of methodologies and assumptions for estimating the levels at which adverse health effects may occur; (C) a statement of methodologies and assumptions for estimating the margin of safety which should be incorporated in the national primary drinking water regulations; (D) proposals for recommended maximum contaminant levels for national primary drinking water regulations, based on the methodologies, assumptions, and studies referred to in clauses (A), (B), and (C) and in paragraph (4); (E) a list of contaminants that level of which in drinking water cannot be determined but which may have an adverse effect on the health of persons; (F) recommended studies and test protocols for future research on the health effects of drinking water contaminants, including a list of the major research priorities and estimated costs necessary to conduct such priority research; (G) periodic assessments and evaluations of unregulated contaminants which may require continuous monitoring or regulation.

[(3) In developing its proposals for recommended maximum contaminant level under paragraph (2)(D) the National Academy of Sciences (or other organization preparing the report) shall evaluate and explain (separately and in composite) the impact of the following considerations:

[(A) The existence of groups or individuals in the population which are more susceptible to adverse effects than the normal healthy adult.

[(B) The exposure to contaminants in other media than drinking water (including exposures in food, in the ambient air, and in occupational settings) and the resulting body burden of contaminants.

[(C) Synergistic effects resulting from exposure to or interaction by two or more contaminants.

[(D) The contaminant exposure and body burden levels which alter physiological function or structure in a manner reasonably suspected of increasing the risk of illness.

[(4) In making the study under this subsection, the National Academy of Sciences (or other organization) shall collect and correlate (A) morbidity and mortality data and (B) monitored data on the quality of drinking water. Any conclusions based on such correlation shall be included in the report of the study.

[(5) Neither the report of the study under this subsection nor any draft of such report shall be submitted to the Office of Management and Budget or to any other Federal agency (other than the Environmental Protection Agency) prior to its submission to Congress.

[(6) Of the funds authorized to be appropriated to the Administrator by this title, such amounts as may be required shall be available to carry out the study and to make the report directed by paragraph (2) of this subsection.]

(e) The Administrator shall provide the Science Advisory Board, established under the Environmental Research, Development and Demonstration Act of 1978, an opportunity to comment prior to pro-

posal or during the public comment period on a maximum contaminant level goal and national primary drinking water regulation.

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[FAILURE BY STATE TO ASSURE] ENFORCEMENT OF DRINKING WATER REGULATIONS

Sec. 1414. (a)(1)(A) Whenever the Administrator finds during a period during which a State has primary enforcement responsibility for public water systems (within the meaning of section 1413(a)) that any public water system—

(i) for which a variance under section 1415 or an exemption under section 1416 is not in effect, does not comply with any national primary drinking water regulation in effect under section 1412, or

(ii) for which a variance under section 1415 or an exemption under section 1416 is in effect, does not comply with any schedule or other requirment imposed pursuant thereto,

he shall so notify the State *and such public water system* and provide such advise and technical assistance to such State and public water system as may be appropriate to bring the system into compliance with such regulation or requirement by the earliest feasible time.

[(B) If the Administrator finds such failure to comply extends beyond the thirtieth day after the date of the notice given pursuant to subparagraph (A), he shall give public notice of such finding and request the State to report within fifteen days from the date of such public notice as to the steps being taken to bring the system into compliance (including reasons for anticipated steps to be taken to bring the system into compliance and for any failure to take steps to bring the system into compliance). If—

[(i) such failure to comply extends beyond the sixtieth day after the date of the notice given pursuant to subparagraph (A); and

[(ii) (*a*) the State fails to submit the report requested by the Administrator within the time period prescribed by the preceding sentence; or

[(*b*) The State submits such report within such period but the Administrator, after considering the report, determines that the State abused its discretion in carrying out primary enforcement responsibility for public water systems by both—

[(I) failing to implement by such sixtieth day adequate procedures to bring the system into compliance by the earliest feasible time, and

[(II) failing to assure by such day the provision through alternative means of safe drinking water by the earliest feasible time:

the Administrator may commence a civil action under subsection (b).]

(B) If beyond the thirtieth day after the Administrator's notification the State has not commenced appropriate enforcement action, the Administrator shall issue an order under subsection (g) requiring the public water system to comply with such regulation or requirement or shall commence a civil action under subsection (b).

(2) Whenever, on the basis of information available to him, the Administrator finds during a period during which a State does not have primary enforcement responsibility for public water systems that a public water system in such State—

(A) for which a variance under section 1415(a)(2) or an exemption under section 1416(f) is not in effect, does not comply with any national primary drinking water regulation in effect under section 1412, or

(B) for which a variance under section 1415(a)(2) or an exemption under section 1416(f) is in effect, does not comply with any schedule or other requirement imposed pursuant thereto,

[he may commence a civil action under subsection (b).] *the Administrator shall issue an order under subsection (g) requiring the Public Water System to comply with such regulation or requirement or shall commence a civil action under subsection (b).*

(b) The Administrator may bring a civil action in the appropriate United States district court to require compliance with a national primary drinking water regulation *or with an order issued under subsection (g)* or with any schedule or other requirement imposed pursuant to a variance or exemption granted under section 1415 or 1416 if—

(1) authorized under paragraph (1) or (2) of subsection (a), or

(2) if requested by (A) the chief executive officer of the State in which is located the public water system which is not in compliance with such regulation or requirement, or (B) the agency of such State which has jurisdiction over compliance by public water systems in the State with national primary drinking water regulations or State drinking water regulations.

The court may enter, in an action brought under this subsection, such judgment as protection of public health may require, taking into consideration the time necessary to comply and the availability of alternative water supplies; and, if the court determines that there has been a [willful] violation of the regulation or schedule or other requirement with respect to which the action was brought, the court may, taking into account the seriousness of the violation, the population at risk, and other appropriate factors, impose on the violator a civil penalty of not to exceed [$5,000] *$25,000* for each day in which such violation occurs.

(c) Each owner or operator of a public water system shall give notice to the persons served by it—

(1) of any failure on the part of the public water system to—

(A) comply with an applicable maximum contaminant level or treatment technique requirement of, or a testing procedure prescribed by, a national primary drinking water regulation, or

(B) perform monitoring required by section 1445(a), and

(2) if the public water system is subject to a variance granted under section 1415(a)(1)(A) or 1415(a)(2) for an inability to meet a maximum contaminant level requirement or is subject to an exemption granted under section 1416, of—

(A) the existence of such variance or exemption, and

(B) any failure to comply with the requirements of any schedule prescribed pursuant to the variance or exemption.

[The Administrator shall be regulation prescribe the form, manner, and frequency for giving notice under this subsection. Notice under the first sentence of this subsection shall be given not less than once every 3 months, shall be given by publication in a newspaper of general circulation serving the area served by each such water system (as determined by the Administrator), shall be furnished to the other communications media serving such area, and shall be furnished to the communications media as soon as practicable after the discovery of the violation with respect to which the notice is required. If the water bills of a public water system are issued more often than once every 3 months such notice shall be included in at least one water bill of the system every 3 months, and if a public water system issues it water bills less often than once every 3 months, such notice shall be included in each of the water bills issued by the system.] *Within 18 months after the date of enactment of the Safe Drinking Water Act Amendments of 1985, the Administrator shall amend such regulations to provide for different types and frequencies of notice based on the differences between violations which are intermittent or infrequent and violations which are continuous or frequent. Such regulations shall also take into account the seriousness of any potential adverse health effects which may be involved. Notice of any violation of a maximum contaminant level or any other violation designated by the Administrator as posing a serious potential adverse health effect shall be given as soon as possible, but in no case later than 14 days after the violation. Notice of a continuous violation of a regulation other than a maximum contaminant level shall be given no less frequently than every three months. Notice of violations judged to be less serious shall be given no less frequently than annually. Notification of such violations to affected persons shall be as prompt as possible and shall include notification by newspaper and shall include, unless inappropriate, a press release to electronic media and individual mailings. Notice under this subsection shall provide a clear and readily understandable explanation of the violation, any potential adverse health effects, the steps that the system is taking to correct such violation, and the necessity for seeking alternative water supplies, if any, until the violation is corrected. Until such amended regulations are promulgated, the regulations in effect on the date of the enactment of the Safe Drinking Water Act Amendments of 1985 shall remain in effect.* The Administrator may also require the owner or operator of a public water system to give notice to the persons served by it of contaminant level of any unregulated contaminant required to be monitored under section 1445(a). Any person who willfully violates this subsection or regulations issued under this subsection shall be fined not more than $5,000.

* * * * * * *

(g)(1) In any case in which the Administrator is authorized to bring a civil action under this section with respect to any regulation, schedule, or other requirement, the Administrator also may issue an order to require compliance with such regulation, schedule, or other requirement.

(2) An order issued under this subsection shall not take effect until after notice and opportunity for public hearing and, in the

case of a State having primary enforcement responsibility, until after the Administrator has provided the State with an opportunity to confer with the Administrator regarding the proposed order. A copy of any order proposed to be issued under this subsection shall be sent to the appropriate State agency of the State involved if the State has primary enforcement responsibility for public water systems in that State. Any order issued under this subsection shall state with reasonable specificity the nature of the violation. In any case in which an order under this subsection is issued to a corporation, a copy of such order shall be issued to appropriate corporate officers.

(3)(A) Any person who violates, fails, or refuses to comply with an order under paragraph (2) shall be liable to the United States for a civil penalty of not more than $25,000 per day of violation.

(B) Whenever any civil penalty sought by the Administrator under this paragraph does not exceed a total of $5,000, the penalty shall be assessed by the Administrator after notice and opportunity for a hearing on the record in accordance with section 554 of title 5 of the United States Code.

(C) Whenever a civil penalty sought by the Administrator exceeds $5,000, the penalty shall be assessed by a civil action brought by the Administrator in the appropriate United States district court (as determined under the provisions of title 28 of the United States Code).

(D) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, or after the appropriate court of appeals has entered final judgment in favor of the Administrator, the Attorney General shall recover the amount for which such person in liable in any appropriate district court of the United States. In any such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

VARIANCES

SEC. 1415. (a) Notwithstanding any other provision of this part, variances from national primary drinking water regulations may be granted as follows:

(1)(A) A State which has primary enforcement responsibility for public water systems may grant one or more variances from an applicable national primary drinking water regulation to one or more public water systems within its jurisdiction, which because of characteristics of the raw water sources which are reasonably available to the systems, cannot meet the requirements respecting the maximum contaminant levels of such drinking water regulation. **[**despite**]** *A variance may only be issued to a system after the system's* application of the **[**best**]** technology, treatment techniques, or other means, which the Administrator finds are **[**generally**]** *the best* available (taking costs into consideration). *The Administrator shall propose and promulgate his finding of the best available technology, treatment techniques or other means available for each contaminant for purposes of this subsection at the time he proposes and promulgates a maximum contaminant level for each such contaminant. The Administrator's finding of best avail-*

able technology, treatment techniques or other means for purposes of this subsection may vary depending on the number of persons served by the system or for other physical conditions related to engineering feasibility and costs of compliance with maximum contaminant levels as considered appropriate by the Administrator. Before a State may grant a variance under this subparagraph, the State must find that the variance will not result in an unreasonable risk to health. If a State grants a public water system a variance under this subparagraph the State shall prescribe [within one year of the date] *at the time* the variance is granted, a schedule for—

(i) compliance (including increments of progress) by the public water system with each contaminant level requirement with respect to which the variance was granted, and

(ii) implementation by the public water system of such *additional* control measures as the State may require for each contaminant, subject to such contaminant level requirement, during the period ending on the date compliance with such requirement is required.

Before a schedule prescribed by a State pursuant to this subparagraph may take effect, the State shall provide notice and opportunity for a public hearing on the schedule. A notice given pursuant to the preceding sentence may cover the prescribing of more than one such schedule and hearing held pursuant to such notice shall include each of the schedules covered by the notice. A schedule prescribed pursuant to this subparagraph for a public water system granted a variance shall require compliance by the system with each contaminant level requirement with respect to which the variance was granted as expeditiously as practicable (as the State may reasonable determine).

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EXEMPTIONS

SEC. 1416. (a) * * *

(b)(1) If a State grants a public water system an exemption under subsection (a), the State shall prescribe, [within one year of the date] *at the time* the exemption is granted, a schedule for—

(A) compliance (including increments of progress) by the public water system with each contaminant level requirement and treatment technique requirement with respect to which the exemption was granted, and

(B) implementation by the public water system of such control measures as the State may require for each contaminant, subject to such contaminant level requirement or treatment technique requirement, during the period ending on the date compliance with such requirement is required.

Before a schedule prescribed by a State pursuant to this subsection may take effect, the State shall provide notice and opportunity for a public hearing on the schedule. A notice given pursuant to the preceding sentence may cover the prescribing of more than one such schedule and a hearing held pursuant to such notice shall include each of the schedules covered by the notice.

(2)(A) A schedule prescribed pursuant to this subsection for a public water system granted an exemption under subsection (a) shall require compliance by the system with each contaminant level and treatment technique requirement with respect to which the exemption was granted as expeditiously as practicable (as the State may reasonably determine) but (except as provided in subparagraph (B)—

(i) in the case of an exemption granted with respect to a contaminant level or treatment technique requirement prescribed by the [interim] national primary drinking water regulations promulgated under section 1412(a), [not later than January 1, 1984;] *not later than 12 months after the date of enactment of the Safe Drinking Water Act Amendments of 1985;* and

(ii) in the case of an exemption granted with respect to a contaminant level or treatment technique requirement prescribed by [revised] national primary drinking water regulations, [not later than seven years after the date such requirement takes effect.] *other than a regulation referred to in section 1412(a) 12 months after the date of the issuance of the exemption.*

[(B) Notwithstanding clauses (i) and (ii) of subparagraph (A) of this paragraph, the final date for compliance prescribed in a schedule prescribed pursuant to this subsection for an exemption granted for a public water system which (as determined by the State granting the exemption) has entered into an enforceable agreement to become a part of a regional public water system shall—

[(i) in the case of a schedule prescribed for an exemption granted with respect to a contaminant level or treatment technique requirement prescribed by interim national primary drinking water regulations, be not later than January 1, 1986; and

[(ii) in the case of a schedule prescribed for an exemption granted with respect to a contaminant level or treatment technique requirement prescribed by revised national primary drinking water regulations, be not later than nine years after such requirement takes effect].

(B) The final date for compliance provided in any schedule in the case of any exemption may be extended by the State (in the case of a State which has primary enforcement responsibility) or by the Administrator (in any other case) for a period not to exceed 3 years after the date of the issuance of the exemption if the public water system establishes that—

(i) the system cannot meet the standard without capital improvements which cannot be completed within the period of such exemption;

(ii) in the case of a system which needs financial assistance for the necessary improvements, the system has entered into an agreement to obtain such financial assistance; or

(iii) the system has entered into an enforceable agreement to become a part of a regional public water system; and

the system is taking all practicable steps to meet the standard.

(C) In the case of a system which does not serve more than 500 service connections and which needs financial assistance for the necessary improvements, an exemption granted under subsection

(b)(2)(A) (i) or (ii) may be renewed for one or more additional 2-year periods if the system establishes that it continues to meet the requirements of subsection (B).

PART C—PROTECTION OF UNDERGROUND SOURCES OF DRINKING WATER

REGULATIONS FOR STATE PROGRAMS

SEC. 1421. (a)(1) * * *

* * * * * * *

(b)(1) * * *

(2) Regulations of the Administrator under this section for State underground injection control programs may not prescribe requirements which interfere with or impede—

(A) the underground injection of brine or other fluids which are brought to the surface in connection with oil or natural gas production, *or natural gas storage operations,* or

(B) any underground injection for the secondary or tertiary recovery of oil or natural gas,

unless such requirements are essential to assure that underground sources of drinking water will not be endangered by such injection.

STATE PRIMARY ENFORCEMENT RESPONSIBILITY

SEC. 1422. (a) * * *

* * * * * * *

(c) If the Administrator disapproves a State's program (or part thereof) under subsection (b)(2), if the Administrator determines under subsection (b)(3) that a State no longer meets the requirements of clause (i) or (ii) of subsection (b)(1)(A), or if a State fails to submit an application or notice before the date of expiration of the period specified in subsection (b)(1), the Administrator shall by regulation within 90 days after the date of such disapproval, determination, or expiration (as the case may be) prescribed (and may from time to time by regulation revise) a program applicable to such State meeting the requirements of section 1421 (b). Such program may not include requirements which interfere with or impede—

(1) the underground injection of brine or other fluids which are brought to the surface in connection with oil or natural gas production, *or natural gas storage operations,* or

(2) any underground injection for the secondary or tertiary recovery of oil or natural gas,

unless such requirements are essential to assure that underground sources of drinking water will not be endangered by such injection. Such program shall apply in such State to the extent that a program adopted by such State which the Administrator determines meets such requirements is not in effect. Before promulgating any regulation under this section, the Administrator shall provide opportunity for public hearing respecting such regulation.

[FAILURE OF STATE TO ASSURE] ENFORCEMENT OF PROGRAM

SEC. 1423. (a)(1) Whenever the Administrator finds during a period during which a State has primary enforcement responsibility for underground water sources (within the meaning of section 1422(b)(3)) or section 1422(b)(3) that any person who is subject to a requirement of an applicable underground injection control program in such State is violating such requirement, he shall so notify the State and the person violating such requirement. [If the Administrator finds such failure to comply extends beyond the thirtieth day after the date of such notice, he shall give public notice of such finding and request the State to report within 15 days after the date of such public notice as to the steps being taken to bring such person into compliance with such requirement (including reasons for anticipated steps to be taken to bring such person into compliance with such requirement and for any failure to take steps to bring such person into compliance with such requirement). If—

[(A) such failure to comply extends beyond the sixtieth day after the date of the notice given pursuant to the first sentence of this paragraph, and

[(B)(i) the State fails to submit the report requested by the Administrator within the time period prescribed by the preceding sentence, or

[(ii) the State submits such report within such period but the Administrator after considering the report, determines that by failing to take necessary steps to bring such person into compliance by such sixtieth day the State abused its discretion in carrying out primary enforcement responsibility for underground water sources,

the Administrator may commence a civil action under subsection (b)(1).] *If beyond the thirtieth day after the Administrator's notification the State has not commenced appropriate enforcement action, the Administrator shall issue an order under subsection (d) requiring the person to comply with such requirement or shall commence a civil action under subsection (b).*

(2) Whenever the Administrator finds during a period during which a State does not have primary enforcement responsibility for underground water sources that any person subject to any requirement of any applicable underground injection control program in such States is violating such requirement, [he may commence a civil action under subsection (b)(1).] *the Administrator shall issue an order under subsection (d) requiring the person to comply with such requirement or shall commence a civil action under subsection (b).*

[(b)(1) When authorized by subsection (a), the Administrator may bring a civil action under this paragraph in the appropriate United States district court to require compliance with any requirement of an applicable underground injection control program. The court may enter such judgment as protection of public health may require, including, in the case of an action brought against a person who violates an applicable requirement of an underground injection control program and who is located in a State which has primary eforcement responsibility for underground water sources, the imposition of a civil penalty of not to exceed $5,000 for each day such person violates such requirement after the expiration of 60 days after receiving notice under subsection (a)(1).

[(2) Any person who violates any requirement of an applicable underground injection control program to which he is subject during any period for which the State does not have primary enforcement responsibility for underground water sources (A) shall be subject to a civil penalty of not more than $5,000 for each day for such violation, or (B) if such violation is willful, such person may, in lieu of the civil penalty authorized by clause (B), be fined not more than $10,000 for each day of such violation.]

(b) Civil actions referred to in paragraphs (1) and (2) of subsection (a) shall be brought in the appropriate United States district court and such court shall have jurisdiction to require compliance with any requirement of an applicable underground injection program or an order issued under subsection (c). The court may enter such judgment as protection of public health may require. Any person who violates any requirement of an applicable underground injection control program (A) shall be subject to a civil penalty of not more than $25,000 for each day of such violation, and (B) if such violation is willful, such person may, in addition to or in lieu of the civil penalty authorized by clause (A), be fined not more than $25,000 for each day of such violation, or imprisoned for not more than three years, or both.

(c)(1) ADMINISTRATIVE ORDERS FOR OTHER THAN OIL OR NATURAL GAS INJECTION WELL OPERATORS.—In any case in which the Administrator is authorized to bring a civil action under this section with respect to any regulation or other requirement of this part other than those relating to (A) the underground injection of brine or other fluids which are brought to the surface in connection with oil or natural gas production, or (B) any underground injection for the secondary or tertiary recovery of oil or natural gas, the Administrator may also issue an order under this subsection either assessing a civil penalty of not more than $25,000 per day for each violation for any past or current violation, up to a maximum administrative penalty of $125,000, or requiring compliance with such regulation or other requirement, or both.

(2) ADMINISTRATIVE ORDERS FOR OIL OR NATURAL GAS INJECTION WELL OPERATORS.—In any case in which the Administrator is authorized to bring a civil action under this section with respect to any regulation, or other requirement of this part relating to (A) the underground injection of brine or other fluids which are brought to the surface in connection with oil or natural gas production, or (B) any underground injection for the secondary or tertiary recovery of oil or natural gas, the Administrator may also issue an order under this subsection either assessing a civil penalty of not more than $5,000 per day for each violation for any past or current violation, up to a maximum administrative penalty of $125,000, or requiring compliance with such regulation or other requirement, or both.

(3) PROCEDURE.—(A) An order under this subsection shall be issued by the Administrator after opportunity (provided in accordance with this subparagraph) for a hearing. Before issuing this order, the Administrator shall give to the person to whom it is directed written notice of the Administrator's proposal to issue such order and the opportunity to request, within 30 days of the date the

notice is received by such person, a hearing on the order. Such hearing shall not be subject to section 554 or 556 of title 5, United States Code, but shall provide a reasonable opportunity to be heard and to present evidence.

(B) The Administrator shall provide public notice of, and reasonable opportunity to comment on, any proposed order.

(C) Any citizen who comments on any proposed order under subparagraph (B) shall be given notice of any hearing held under this subsection and of any order. In any hearing held under subparagraph (A), such citizen shall have a reasonable opportunity to be heard and to present evidence. If no hearing is held prior to issuance of the order, then upon presentation by such citizen, within 30 days of issuance of the order, of evidence that such order was inadequate or improper, the Administrator shall set aside such order immediately and provide a hearing in accordance with subparagraph (A) on the proposed order.

(D) Any order issued under this subsection shall become effective 30 days following its issuance unless an appeal is taken pursuant to paragraph (5) or the order is set aside pursuant to subparagraph (C). If a hearing request made pursuant to subparagraph (C) is denied, an order issued under this subsection shall become effective thirty days following such denial.

(4) Content of Order.—(A) Any order issued under this subsection shall state with reasonable specificity the nature of the violation and may specify a reasonable time for compliance.

(B) In assessing any civil penalty under this subsection, the Administrator shall take into account appropriate factors, including (i) the seriousness of the violation; (ii) the economic benefit (if any) resulting from the violation; (iii) any history of such violations; (iv) any good-faith efforts to comply with the applicable requirements; (v) the economic impact of the penalty on the violator; and (vi) such other matters as justice may require.

(5) Effect of Order.—Any violation with respect to which the Administrator has commenced and is diligently prosecuting an action, or has issued an order, under this subsection shall not be subject to an action under subsection (b) of this section or section 1424(c) or 1449 of this Act: Provided, That the foregoing limitation on civil actions under section 1449 of this Act shall not apply with respect to any violation for which (i) a civil action under section 1449(a)(1) of this Act has been filed prior to commencement of an action under this subsection or; (ii) a notice of violation under section 1449(b)(1) of this Act has been given prior to commencement of an action under this subsection and an action under section 1449(a)(1) of this Act is filed prior to 120 days after such notice is given.

(6) Judicial Review.—Any person against whom an order is issued or who commented on a proposed order pursuant to paragraph (3) may file an appeal of such order with the United States District Court for the District of Columbia or the district in which the violation is alleged to have occurred. Such an appeal may only be filed within the 30 day period beginning on the date the order is issued. Appellant shall simultaneously send a copy of the appeal by certified mail to the Administrator and to the Attorney General. The Administrator shall promptly file in such court a certified copy

of the record on which such order was imposed. The district court shall not set aside or remand such order unless there is not substantial evidence on the record, taken as a whole, to support the finding of a violation or, unless the Administrator's assessment of penalty or requirement for compliance constitutes an abuse of discretion. The district court shall not impose additional civil penalties for the same violation unless the Administrator's assessment of a penalty constitutes an abuse of discretion.

(7) Collection.—If any person fails to pay an assessment of a civil penalty—

(A) after the order becomes effective under paragraph (3), or

(B) after a court, in an action brought under paragraph (6), has entered a final judgment in favor of the Administrator, the Administrator may request the Attorney General to bring a civil action in an appropriate district court to recover the amount assessed (plus costs, attorneys' fees, and interest at currently prevailing rates from the date the order is effective or the date of such final judgment, as the case may be). In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review.

(8) Subpoena.—The Administrator may, in connection with administrative proceedings under this subsection, issue subpoenas compelling the attendance and testimony of witnesses and subpoenas duces tecum, and may request the Attorney General to bring an action to enforce any subpoena under this section. The district courts shall have jurisdiction to enforce such subpoenas and impose sanction.

[c] *(d)* Nothing in this title shall diminish any authority of a State or political subdivision to adopt or enforce any law or regulation respecting underground injection but no such law or regulation shall relieve any person of any requirement otherwise applicable under this title.

OPTIONAL DEMONSTRATION BY STATES RELATING TO OIL OR NATURAL GAS

Sec. 1425. (a) For purposes of the Administrator's approval or disapproval under section 1422 of that portion of any State underground injection control program which relates to—

(1) the underground injection of brine or other fluids which are brought to the surface in connection with oil or natural gas production, *or natural gas storage operations,* or,

(2) any underground injection for the secondary or tertiary recovery of oil or natural gas.

in lieu of the showing required under subparagraph (A) of section 1422(b)(1) the State may demonstrate that such portion of the State program meets the requirements of subparagraphs (A) through (D) of section 1421(b)(1) and represents an effective program (including adequate recordkeeping and reporting) to prevent underground injection which endangers drinking water sources.

REGULATION OF STATE PROGRAMS

Sec. 1426. (a) No later than 18 months after enactment of the Safe Drinking Water Act Amendments of 1985, the Administrator *shall revise regulations issued under this Act to require ground water monitoring at locations and in such a way that would provide the earlist possible detection of fluid migration into, or in the direction of, underground drinking water sources from a class I injection well unless the Administrator or delegated State authority concludes, on the basis of the applicant's demonstration, that such monitoring is not necessary because no potential exists for migration from the injection zone that may be harmful to human health or the environment.*

(b) The Administrator shall submit a report to Congress no later than September 1987, summarizing the results of State surveys, currently required by the Administrator, 3 years after the aelegation of the program, under this section to a primary State enforcement authority. The report shall include the following information:

(1) the numbers and categories of class V wells which discharge nonhazardous waste into or above an underground source of drinking water,

(2) the primary contamination problems associated with different categories of these disposal wells, and

(3) recommendations for minimum design, construction, installation, and siting requirements that should be applied to protect underground sources of drining water from such contamination wherever necessary.

SOLE SOURCE AQUIFER DEMONSTRATION PROGRAM

SEC. 1427. (a) The purpose of this section is to establish procedures for development, implementation, and assessment of demonstration programs designed to protect critical aquifer protection areas located within areas designated as sole or principal source aquifers under section 1424(e) of the Safe Drinking Water Act.

(b) For purposes of this section, critical aquifer protection area means all or part of an area located within an area for which an application for designation as a sole or principal source aquifer pursuant to section 1424(e) has been submitted to or approved by the Administrator as of the date of enactment of this section and which satisfies the criteria established by the Administrator under subsection (d).

(c)(1) Any State, municipal, or local government or political subdivision thereof or any planning entity (including any interstate regional planning entity) that identifies a critical aquifer protection area over which it has authority or jurisdiction may apply to the Administrator for the selection of such area for a demonstration program under subsection (e). Any applicant shall consult with other government or planning entities with authority or jurisdiction in such area prior to application. The application shall include a certification by the Governor that the plan is consistent with State laws, regulations, and policies.

(2) Applicants, other than the Governor, in any State in which any Federal funds under section 208 of the Clean Water Act have been expended prior to the date of enactment of this section for planning to protect a sole source aquifer designated under section 1424(e) of this Act shall: (A) submit the application for a demonstration program jointly with the Governor and (B) shall obtain the ap-

proval of any plan developed or implemented under subsection (g) of this section from the Governor prior to submission to the Administrator.

(d) Within 16 months of the date of enactment of this section, the Administrator shall, by rule, establish criteria for identifying critical aquifer protection areas under this section. In establishing such criteria, the Administrator shall consider the following:

(1) the vulnerability of the aquifer to contamination due to hydrogeologic characteristics;

(2) the number of persons or the proportion of population using the ground water as a drinking water source;

(3) the economic, social and environmental benefits that would result to the area from maintenance of ground water of high quality; and

(4) the economic, social, and environmental costs that would result from degradation of the quality of the ground water.

(e) An application submitted to the Administrator by any applicant shall propose boundaries for the critical aquifer protection area within their jurisdiction and shall include a plan proposal or a comprehensive management plan for the proposed protection area. A plan approved prior to the date of enactment under section 208 of the Clean Water Act to protect a sole source aquifer designated under section 1424(e) of this Act shall be considered a comprehensive management plan for the purposes of this section. The objectives of such plan shall be to maintain the quality of the ground water in the critical aquifer protection area in a manner reasonably expected to protect human health, the environment, and the ground water resources. The following elements shall be included in such a protection plan:

(A) a map showing the detailed boundary of the critical protection area;

(B) a hydrogeologic assessment of surface and ground water resources within the critical protection area;

(C) an identification of existing and potential point and nonpoint sources of ground water degradation;

(D) an assessment of the relationship between activities on the land surface and ground water quality;

(E) specific actions and management practices to be implemented in the critical protection area to prevent adverse impacts on ground water quality;

(F) identification of authority adequate to implement the plan, estimates of program costs, and sources of State matching funds.

(f) Within 120 days after receipt of an application under this section, the Administrator must approve or disapprove the application based on a determination that the critical protection area satisfies the criteria established under subsection (d) and that a demonstration program for the area would provide protection for ground water quality consistent with the objectives stated in subsection (e). Any petitioner may modify and resubmit any application which is not approved. Upon approval of an application, the Administrator may enter into a cooperative agreement with the applicant to establish a demonstration program. Such program shall include the develop-

ment and implementation of a plan for the protection of the ground water recharged through the critical aquifer protection area.

(g) Upon entering a cooperative agreement under subsection (e), the Administrator may provide to the applicant, on a matching basis, a grant of 50 per centum of the costs of developing and implementing the plan established under this section. The total amount of grants under this section for any one aquifer, designated under section 1424(e), shall not exceed $4,000,000 in any fiscal year.

(h) No funds authorized under this subsection may be used to fund activities funded under other sections of this Act or the Clean Water Act, the Solid Waste Disposal Act, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, or other Federal statutes.

(i) No funds authorized to be appropriated under this section may be used to clean up any source of contamination or to bring any source of contamination into compliance with Federal, State, or local statutes.

(j) No later than December 31, 1989, each State shall submit to the Administrator a report assessing the impact of the program on ground water quality and identifying those measures found to be effective in protecting ground water resources. No later than September 30, 1990, the Administrator shall submit to Congress a report summarizing the State reports, and assessing the accomplishments of the sole source aquifer demonstration program including an identification of protection methods found to be most effective and recommendations for their application to protect ground water resources from contamination wherever necessary.

(k) Nothing under this section shall be construed to amend, supersede or abrogate rights to quantities of water which have been established by interstate water compacts, Supreme Court decrees, or State water laws; or any requirement imposed or right provided under any Federal or State environmental or public health statute.

(l) There are authorized to be appropriated for the purposes of this section $20,000,000 for each of the fiscal years 1987 through 1990.

PART D—EMERGENCY POWERS

EMERGENCY POWERS

SEC. 1431. (a) * * *

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TAMPERING WITH PUBLIC WATER SYSTEMS

SEC. 1432. (a) Any person who tampers with a public water system shall be fined not more than $50,000, or imprisoned for not more than 5 years, or both.

(b) Any person who attempts to tamper, or makes a threat to tamper, with a public drinking water system shall be fined not more than $20,000, or imprisoned for not more than 3 years, or both.

(c) The Administrator may bring a civil action in the appropriate United States district court (as determined under the provisions of title 28 of the United States Code) against any person who tampers, attempts to tamper, or makes a threat to tamper with a public water

system. The court may impose on such person a civil penalty of not more than $50,000 for such tampering or not more than $20,000 for such attempt or threat.

(d) For the purposes of this section, the term "tamper" means—

(1) to introduce a contaminant into a public water system with the intention of harming persons; or

(2) to otherwise interfere with the operation of a public water system with the intention of harming persons.

PART E—GENERAL PROVISIONS

ASSURANCE OF AVAILABILITY OF ADEQUATE SUPPLIES OF CHEMICALS NECESSARY FOR TREATMENT OF WATER

SEC. 1441. (a) * * *

*   *   *   *   *   *   *

(f) No certification of need or order issued under this section may remain [in effect—

[(1) for more than one year, or

[(2) after September 30, 1982

whichever occurs first.] *in effect for more than one year.*

RESEARCH, TECHNICAL ASSISTANCE, INFORMATION, AND TRAINING OF PERSONNEL

SEC. 1442. (a)(1) * * *

*   *   *   *   *   *   *

(f) There are authorized to be appropriated to carry out the provisions of this section, other than subsection (a)(2)(B) and provisions relating to research, $15,000,000 for the fiscal year ending June 30, 1975; $25,000,000 for the fiscal year ending June 30, 1976; $35,000,000 for the fiscal year ending June 30, 1977; $17,000,000 for each of the fiscal years 1978 and 1979; $21,405,000 for the fiscal year ending September 30, 1980; $30,000,000 for the fiscal year ending September 30, 1981; and $35,000,000 for the fiscal year ending September 30, 1982. There are authorized to be appropriated to carry out subsection (a)(2)(B) $8,000,000 for each of the fiscal years 1978 through 1982. *There are authorized to be appropriated to carry out subsection (a)(2)(B), $11,300,000 for the fiscal year 1986, $11,300,000 for the fiscal year 1987, $11,300,000 for the fiscal year 1988, and $11,300,000 for the fiscal year 1989 and $11,300,000 for the fiscal year 1990. There are authorized to be appropriated to carry out the provisions of this section (other than subsection (g), subsection (a)(2)(B), and provisions relating to research), $47,000,000 for the fiscal year 1986, $47,000,000 for the fiscal year 1987, $47,000,000 for the fiscal year 1988, $47,000,000 for the fiscal year 1989 and $47,000,000 for the fiscal year 1990.*

(g) The Administrator is authorized to provide technical assistance to small public water systems or water systems of Indian tribal organizations to enable such systems to achieve and maintain compliance with national drinking water regulations. Such assistance may include "circuit-rider" programs, training and preliminary engineering studies. There are authorized to be appropriated to carry out this subsection $10,000,000 for each of the fiscal years 1986

through 1990. Of this sum, at least five per centum shall be utilized for technical assistance to Indian tribal organizations.

GRANTS FOR STATE PROGRAMS

SEC. 1443. (a)(1) * * *

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(7) For the purposes of making grants under paragraph (1) there are authorized to be appropriated $15,000,000 for the fiscal year ending June 30, 1976, $25,000,000 for the fiscal year ending June 30, 1977, $35,000,000 for fiscal year 1978, $45,000,000 for fiscal year 1979, $29,450,000 for the fiscal year ending September 30, 1980, $32,000,000 for the fiscal year ending September 30, 1981, and $34,000,000 for the fiscal year ending September 30, 1982. *For the purposes of making grants under paragraph (1) there are authorized to be appropriated $45,000,000 for the fiscal year 1986, $45,000,000 for the fiscal year 1987, $45,000,000 for the fiscal year 1988, $45,000,000 for the fiscal year 1989 and $45,000,000 for the fiscal year 1990.*

(b)(1) * * *

* * * * * * *

(5) For purposes of making grants under paragraph (1) there are authorized to be appropriated $5,000,000 for the fiscal year ending June 30, 1976, $7,500,000 for the fiscal year ending June 30, 1977, $10,000,000 for each of the fiscal years 1978 and 1979, $7,795,000 for the fiscal year ending September 30, 1980, $18,000,000 for the fiscal year ending September 30, 1981, and $21,000,000 for the fiscal year ending September 30, 1982. *For the purpose of making grants under paragraph (1) there are authorized to be appropriated $28,000,000 for the fiscal year 1986, $28,000,000 for the fiscal year 1987, $28,000,000 for the fiscal year 1988, $28,000,000 for the fiscal year 1989 and $28,000,000 for the fiscal year 1990.*

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RECORDS AND INSPECTIONS

SEC. 1445. (a) *(1)* Every person who is a supplier of water, who is or may be otherwise subject to a primary drinking water regulation prescribed under section 1412 or to an applicable underground injection control program (as defined in section 1422(c)), who is or may be subject to the permit requirement of section 1424 or to an order issued under section 1441, or who is a grantee, shall establish and maintain such records, make such reports, conduct such monitoring, and provide such information as the Administrator may reasonably require by regulation to assist him in establishing regulations under this title, in determining whether such person has acted or is acting in compliance with this title, in administering any program of financial assistance under this title, in evaluating the health risks of unregulated contaminants, or in advising the public of such risks.

(2) Not later than 18 months after date of enactment of the Safe Drinking Water Act Amendments of 1985, the Administrator shall promulgate regulations for every public water system to conduct a

monitoring program for unregulated contaminants. Such regulations shall require monitoring of drinking water supplied by the system, and shall vary the frequency and schedule of monitoring requirements for systems based on the number of persons served by the system, the source of supply, and the contaminants likely to be found. Each system shall be required to monitor at least once within 5 years of the effective date of such regulations unless the Administrator requires more frequent monitoring.".

(3) Regulations under paragraph (2) shall list unregulated contaminants for which systems may be required to monitor, and shall include criteria by which the primary enforcement authority in each State could show cause for delegation of a contaminant from the designated list. The primary State enforcement authority may delete contaminants for an individual system, in accordance with these criteria, with an approved assessment of the contaminants potentially to be found in the system. The Administrator shall approve or disapprove such an assessment submitted by a State within 90 days.

(4) Public water systems conducting monitoring of unregulated contaminants pursuant to this section shall provide the results of such monitoring to the primary enforcement notification of the availability of the results of such monitoring to the primary enforcement authority.

(5) Notification of the availability of the results of such monitoring program required under paragraph (2), and notification of the availability of the results of the monitoring program referred to in paragraph (5), shall be given to the persons served by the system and the Administrator.

(6) The Administrator may waive the monitoring requirement of this subsection for a system which has conducted a monitoring program after January 1, 1983, if the Administrator determines the program to have been consistent with the regulations promulgated under this section.

(7) Any system supplying less than 150 service connections shall be regarded as complying with this subsection if such system provides water samples or the opportunity for sampling according to the rules established by the Administrator. There are authorized to be appropriated $30,000,000 in the fiscal year ending September 30, 1986 to remain available until expended to carry out the provisions of this subsection.

In requiring a public water system to monitor under this subsection, the Administrator may take into consideration the system size and the contaminants likely to be found in the system's drinking water.

JUDICIAL REVIEW

[SEC. 1448. (a) A petition for review of—

[(1) action of the Administrator in promulgating any national primary drinking water regulation under section 1412, any regulation under section 1413(b)(1), any regulation under section 1414(c), any regulation for State underground injection control programs under section 1421, or any general regulation for the administration of this title may be filed only in the

United States Court of Appeals for the District of Columbia Circuit; and

[(2) action of the Administrator in promulgating any other regulation under this title, issuing any order under this title, or making any determination under this title may be filed only in the United States court of appeals for the appropriate circuit.

Any such petition shall be filed within the 45-day period beginning on the date of the promulgation of the regulation or issuance of the order with respect to which review is sought or on the date of the determination with respect to which review is sought, and may be filed after the expiration of such 45-day period if the petition is based solely on grounds arising after the expiration of such period. Action of the Administrator with respect to which review could have been obtained under this subsection shall not be subject to judicial review in any civil or criminal proceeding for enforcement or in any civil action to enjoin enforcement.]

JUDICIAL REVIEW

SEC. 1448. (a)(1) A petition for review of—

(A) action of the Administrator in promulgating any national primary drinking water regulation under section 1412, any regulation under section 1413(b), any regulation under section 1414(c), any regulation for State underground injection control programs under section 1421, or any general regulation for the administration of this title may be filed in the United States Court of appeals for the District of Columbia, or in any United States court of appeals for a circuit in which the petitioner resides or transacts business which is directly affected by such action; and

(B) action of the Administrator in promulgating any other regulation under this title, issuing any order under this title, or making any determination under this title may be filed only in the United States court of appeals for a circuit in which the petitioner resides or transacts business which is directly affected by such action.

Any such petition shall be filed within the 120-day period beginning on the date of the promulgation of the regulation or issuance of the order with respect to which review is sought or on the date of the determination with respect to which review is sought, or after such date only if the petition is based solely on grounds which arose after such one hundred and twentieth day. Action of the Administrator with respect to which review could have been obtained under this subsection shall not be subject to judicial review in any civil or criminal proceeding for enforcement or in any civil action to enjoin enforcement.

(2)(A) If petitions for review of the same agency action have been filed in two or more United States courts of appeals and the Administrator has received written notice of the filing of the first such petition more than 30 days before receiving written notice of the filing of the second petition, then the record shall be filed in that court in which the first petition was filed. If petitions for review of the same agency action have been filed in two or more United States courts of

appeals and the Administrator has received written notice of the filing of one or more petitions within 30 days or less after receiving written notice of the filing of the first petition, then the Administrator shall promptly advise in writing the Administrative Office of the United States Courts that petitions have been filed in two or more United States courts of appeals, and shall identify each court for which he has written notice that such petitions have been filed within 30 days or less of receiving written notice of the filing of the first such petition. Pursuant to a system of random selection devised for this purpose, and within three business days after receiving such notice from the Administrator, the Administrative Office thereupon shall select the court in which the record shall be filed from among those identified by the Administrator. Upon notification of such selection, the Administrator shall promptly file the record in such court. For the purpose of review of agency action which has previously been remanded to the Administrator, the record shall be filed in the court of appeals which remanded such action.

(B) Where petitions have been filed in two or more United States courts of appeals with respect to the same agency action and the record has been filed in one of such courts pursuant to paragraph (1), the other courts in which such petitions have been filed shall promptly transfer such petitions to the United States court of appeals in which the record has been filed. Pending selection of a court pursuant to subsection (1), any court in which a petition has been filed may postpone the effective date of the agency action until 15 days after the Administrative Office has selected the court in which the record shall be filed.

(C) Any court in which a petition with respect to any agency action has been filed, including any court selected pursuant to subparagraph (A), may transfer such petition to any other United States court of appeals for the convenience of the parties or otherwise in the interest of justice.

(b) The United States district courts shall have jurisdiction of actions brought to review (1) the granting of, or the refusing to grant, a variance or exemption under section 1415 or 1416 or (2) the requirements of any schedule prescribed for a variance or exemption under such section or the failure to prescribe such a schedule. Such an action may only be brought upon a petition for review filed with the court within the [45-day] *120-day* period beginning on the date the action sought to be reviewed is taken or, in the case of a petition to review the refusal to grant a variance or exemption or the failure to prescribe a schedule, within the [45-day] *120-day* period beginning on the date action is required to be taken on the variance, exemption, or schedule, as the case may be. A petition for such review may be filed after the expiration of such period if the petition is based solely on grounds arising after the expiration of such period. Action with respect to which review could have been obtained under this subsection shall not be subject to judicial review in any civil or criminal proceeding for enforcement or in any civil action to enjoin enforcement.

(c) In any judicial proceeding in which review is sought of a determination under this title required to be made on the record after notice and opportunity for hearing, if any party applies to the court for leave to adduce additional evidence and shows to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Administrator, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Administrator, in such manner and upon such terms and conditions as the court may deem proper. The Administrator may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken, and he shall file such modified or new findings, and his recommendation, if any, for the modification or setting aside of his original determination, with the return of such additional evidence.

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